SUPREME COURT OF THE UNITED STATES.

No. ~~112~~. 24.

WALTER DUN ET AL, APPELLANTS,

VERSUS

HENRY CLARK ET AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

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Beverly, and Jane his wife, Elizabeth Peter, William, Hamilton, and James Peter. shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue in law.

MARGARET DICK, [SEAL.]
ROBERT DICK, [SEAL.]
THOMAS PETER, [SEAL.]

Signed, sealed, and delivered in presence of
ROBERT P. DUNLOP,
witness to the signature of M. and R. Dick.
JAS DUNLOP, *as to T. Peter.*

Copy, test:

WM. BRENT, *Clk.*

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Pleas begun and held at the Court-House in the town of Columbus, on the second Monday of July, being the twelfth day of the same month, in the year of our Lord one thousand eight hundred and thirty, and of the American Independence the fifty-fifth, before the Honorable John McLean and John W. Campbell, Judges of the Circuit Court of the United States in and for the Seventh Circuit and District of Ohio.

Henry Clark and others, complainants,
vs.
Walter Dun and others, respondents,
} *In Chancery.*

Be it remembered that heretofore, to wit: at a circuit court of the United States within and for the seventh circuit and district of Ohio, begun and held at the court-house in the town of Columbus, on Monday the seventh day of January, in the year of our Lord one thousand eight hundred and twenty-two, and of the American independence the forty-sixth. And afterwards, in the same term, to wit, on the eigth day of the same month of January, in the year last aforesaid, came the complainants, by their counsel, and filed in court here their bill of complaint, as follows, to wit:

To the honorable the Judges of the seventh circuit court of the United States, sitting in chancery in and for the district of Ohio, humbly complaining, your orators, Henry Clark, Jonathan Clark, and Mordecai McKinsey, sheweth unto your honors, that Nathaniel Massie, (now deceased,) in his life time, to wit, on the second day of June, in the year of our Lord one thousand eight hundred and three, entered into a contract with Jacob Smith, lately deceased, which was in writing, signed and sealed by both parties, by which the said Jacob "sold to said Massie the tract of land on the north side of Paint creek, whereon he, the said Smith, then lived, to wit, all the bottom land on the creek in said tract that said Smith had not, before that date, sold his interest and right in the town of Amsterdam, of the lots which remained unsold, together with the mills adjoining said town; for which said Massie agreed to give said Smith his heirs, &c. six thousand dollars, to be paid as follows: give said Smith choice of two tracts of land on the Little Miami, one containing 690 acres, adjoining a tract claimed by Clement Carrington, being said Massie's part of a tract that was formerly held by Hunt and Massie, and nearly opposite Waynesville, at three dol-

lars and forty cents per acre, amounting to two thousand three hundred and forty-six dollars; the other tract lies also on the Miami, about two miles above the former, and contains seven hundred acres, at two thousand one hundred and fifty dollars; and, in that proportion for either tract, as mentioned, be the same more or less; the said Smith to determine his choice in eight weeks from the date of said instrument in writing, the balance of the money for the purchase to be paid as follows: one thousand dollars on or before two months from the date of said agreement, six hundred sixty-six dollars and two-thirds, on or before the twenty-fifth day of December next ensuing the date of said instrument in writing, the balance to be paid at two equal annual payments or instalments, to commence from the date of said instrument, and to and on the second day of June, 1805; and for all the remaining part of said tract that remained unsold at the date of said instrument, the said Massie agrees to give acre for acre out of the tract whereon Seth Smith had purchased on Walnut creek, the conveyance to each other, their heirs or assigns, to be made on or before the date of the last payment, that is, the second day of June, 1805, with a general warrantee; which said instrument in writing, thus by each party duly executed, signed, and sealed, and witnessed; and your orators pray may be referred to for greater certainty, and taken and considered a part of this their bill of complaint. And the said Jacob Smith in his life time, to wit, on or about the 17th day of July, 1803, and within eight weeks from the date of said instrument, made and determined his choice to take the lower tract, which election so made was endorsed upon said instrument in writing as of the date last aforesaid, and the said endorsement referred to as a part hereof in the words and figures following, to wit: "July 17th, 1803: I make choice of the lower tract of Massie and Graham," of which the said Massie then and there had notice, and was therewith content. And your orators further set forth and state, that one John Graham, of the city of Richmond, and State of Virginia, now deceased, in his life time became and was interested in the said lower tract, described in said agreement as containing six hundred and ninety acres of land, adjoining a tract claimed by Clement Carrington, formerly held by Hunt and Massie, and nearly opposite Waynesville, made choice of as aforesaid by said Smith, as your orators have been informed and believes, as tenants in common with said Nathaniel Massie and George Gordon, to whom the patent or grant issued, on or about the twenty-fourth day of October, 1809, for eleven hundred and sixty-six acres and two-thirds, which included the tract above described; that said Gordon, having previously sold, conveyed his share to Jesse Hunt on or about the second day of January, 1810, and the said Jesse Hunt, on or about the 25th April following, to wit, April 25th, 1810, having previously sold, conveyed the same, suppose to be 633 2-3 acres of land, to the said Nathaniel Massie and John Graham, whereby they became vested with equal undivided moieties of the entire tract of 1,166 2-3 acres, patented or granted as aforesaid to the said Graham, Massie, and Gordon, and, as your orators are advised and believe, held the same as tenant in common. That some time on or about the twenty-third day of September, in the year 1805, as your orators have been informed and believe, said Massie having previously thereto informed said Graham of his aforesaid contract with said Smith; said Graham gave to said Massie a power of attorney, in writing, bearing that date, Sept. 23, 1805, duly signed, sealed, and delivered in presence of witnesses, and acknowledged before the notary public of said city of Richmond, on the same day referred to as a part hereof; by which said power of attorney, said Graham gave to said Massie full power and authority to bargain, sell, and convey, all the estate, right, title, and interest of said Graham of, in, and to, all his lands and tenements in the State of Ohio, to any persons whomsoever, according to the laws of said State of Ohio, and the money arising from such sales to receive and to pay to him with warranty against him and heirs only, and to warrant the repayment of the purchase money without warranty against persons, and other than said Graham and heirs,

&c. Pursuant to which authority, and in fulfilment of his agreement aforesaid, made with said Smith and Massie. on the seventh day of June, 1810, as such agent and attorney, and as principal with Susan Massie, his wife, made, executed, and delivered to said Smith, a certain indenture, a deed bearing that date, whereby said Massie having previously bargained and sold, as in the agreement aforesaid mentioned, conveyed, or intended to convey, to said Smith, his heirs and assigns forever, the tract of land in said agreement described, or intended to be described, in said indenture or deed, said to contain six hundred and fifty-six acres of land, more or less, and described and bounded as follows: "lying and being in the county of Warren, and State of Ohio, begining at a hackberry and honey locust, the upper corner on the Miami river to Clement Reed's survey, No. 339, and running thereon up said river, with the meanders thereof, to a sycamore and two box elders, a corner made by consent in dividing the original tract, by David Pugh; thence, south, thirty-nine degrees east, with the division line made by the said David Pugh, four hundred and eighty-three poles to two sugar trees on the patent line, south fifty-one degrees, west two hundred and thirty-nine poles and six-tenths, to an elm beach and sugar-tree, the upper back corner of Clement Reed's survey; thence, with his line, north, thirty-nine degrees, west four hundred sixty-one five-tenth poles to the beginging, which said indenture or deed was signed, seal, and delivered by said John Graham, by his said attorney in fact, and by said Massie and wife, as principals, in the presence of one witness only, the laws of the State of Ohio requiring two witnesses to all such indentures or deeds, as your orators are advised and believe, and the same was acknowledged before a justice of the peace, and recorded in the proper county, but having but one subscribing witness, could not be given in evidence at law. And your orators further state, that after the aforesaid conveyance to said Smith, he conveyed the same in parcels to your orators, who had purchased and paid for the same, as follows: to your orator, Jonathan Clark, three hundred and six acres and seventy-five one-hundredths of an acre, by indenture or deed duly executed and delivered, bearing date August eleventh, 1810, and to your orator Henry Clark, two hundred and ninety-nine acres and twenty-five one-hundredths of an acre, by indenture or deed of same date, duly executed and delivered, both of which your orators refer to, and pray that they may be considered as a part of this bill, and to your orator, the said Mordica McKinsey, fifty acres, by indenture or deed, duly executed and delivered, bearing date August 10th, 1812, referred to, for greater certainty, as a part hereof; and your orators charge that the land, to wit, five hundred and twenty-eight acres, more or less, lying on the upper or north side of Paint creek, in Ross county, by said Smith, sold, or in part exchanged, as aforesaid, with said Massie, for the above described land, by said Massie sold and conveyed to him as attorney in fact for said Graham, and with his wife as principal, being the same on which the said Smith then lived; he, said Smith, in his life time, and in the life time of said Graham, to wit, on or about the seventh day of March, in the year of our Lord one thousand eight hundred and eleven, with Patience Smith his wife. by indenture or deed, duly executed and delivered, conveyed to said Graham, his heirs and assigns forever, with covenants of general warranty to an exemplification or attested copy of which your orators refer for greater certainty, and pray that the same may be taken and considered as a part hereof, whereby your orators say, that the said John Graham, in his life, received not only the value of the land by his aforesaid agent and att'y, sold to said Smith, and which was. as your orators have always understood and believe. the real estate and property of said Nathaniel Massie, the said agent or att'y, but held in common with said Graham, as aforesaid, as such tenants in common, and therefore, said Graham entitled to his undivided moiety, and neither to any particular part in severalty; but the said Graham, by such conveyance to him from said Smith and wife, received lands of much greater value, as your orators have been informed and believe, of

the value of five or six thousand dollars; and your orators charge that one of said tracts was, in fact, the price or consideration for the other, as above is stated, as they have been informed and believe, and that, therefore, said Graham has been fully paid for said land, sold and conveyed as aforesaid, by said Massie as his agent and attorney, and with his wife as principal, to said Smith, as if the whole thereof had been his own, or as if the entire interest therein had been vested in him, whereas, in truth and in fact, he was entitled only to one equal undivided moiety of the entire tract of 1,166 2-3 acres, as your orators have been informed and believe, and the said Massie entitled to the other moiety, which would amount to the quantity, or near the quantity, by said Massie so conveyed to said Smith, there being, as your orators have been informed and believe, considerable surplus in the entire tract; your orators therefore charge that they think the said Graham has been fully paid for the land, or so much thereof as belonged to him, which was by said Massie sold and conveyed as aforesaid to said Smith, and that, by accepting said conveyance, and since selling and disposing of said land so conveyed to him by said Smith and wife, as your orators have been informed and believe; the truth is, he, said Graham, has sanctioned and adopted the proceedings of Massie as his own, and to have conveyed to your orators accordingly. But now, so it is, may it please your honors, the said John Graham, in his life time, combining and confederating to and with one Walter Dun, whom your orators pray may be made defendants herein, and they, with divers other persons unknown to your orators, (whose names when discovered, they pray inserted as defendants, with apt and proper words to charge them, and every of them, how to injure, oppress, and defraud your orators, neglected and refuse to convey said lands as he ought to your orators; but said Graham, as they have been informed and believe, died some months ago, within a year last past, after having made and published his last will and testament, whereby he devised, as they are informed and believe, all his real estate in the State of Ohio to the said defendant, Walter Dun, his heirs and assigns, in trust, to be sold and the money to be applied to the use and purposes of said will, of which your orators are ignorant, except as being informed the same is chiefly beneficial and to the use of said defendant himself or to his family, or some or more members thereof; and your orators have been informed, and believe, the said Jacob Smith died about or near two years since, without having perfected the title of your orators to said lands, although often requested so to do, leaving a number of children, his heirs and legal representatives, as follows: Elizabeth, who intermarried with one Joel Dalby; Rachel, who intermarried with James Collier, John Smith, Nancy, who intermarried with Samuel Kyle; Polly, who intermarried with George Taylor, Josiah B. Smith, Jacob Smith; Sarah, who intermarried with Henry Snyder; Lydia, who intermarried with Jacob Stanley, Isaac Smith, Seth Smith; and Hannah, who intermarried with Edward Flood; and your orators pray that the said Joel Dalby and Elizabeth, his wife, late Elizabeth Smith; James Collier and Rachel his wife, late Rachel Smith; John Smith, Samuel Kyle, and *and* Nancy his wife, late Nancy Smith; George Taylor and Polly his wife, late Polly Smith; Josiah B. Smith, Jacob Smith, Henry Snyder and Sarah his wife, late Sarah Smith; Jacob Stanley and Lydia his wife, late Lydia Smith, Isaac Smith, Seth Smith, and Edward Flood, and Hannah his wife, late Hannah Smith, be made defendants to this their bill of complaint; and your orators charge that said Graham, in his life time, pretended your orators had no just right or lawful claim to the lands purchased by them as aforesaid, and at other times he would give out in speeches, and pretend that he had never been paid or compensated for the said land, or that he had not in money, although he well knew the land conveyed as aforesaid by said Smith and wife to him were, to the value, a price of the lands purchased as aforesaid by your orators, full payment of the consideration thereof, and *pro tanto ane* was the price or consideration of the other one, being, by the contract between said Massie and Smith, given for so

much in exchange for the other; and with intention so to oppress and further injure your orators, said Graham, in his life time, commenced his action of ejectment against them to recover possession of said lands, by your orators purchased as aforesaid from said defendant Smith, who purchased, as aforesaid, from said Graham, upon which lands your orators say and charge they have made lasting and very valuable improvements, and because of such defect in said deed from said Graham and Massie to said Smith, having but one witness, the same was rejected when offered in evidence by your orators in their defence, on the motion and application of said Graham's counsel, who gave in evidence the aforesaid patent, and also the deeds from Gordon to Hunt, and from Hunt to said Graham and Massie, and did thereupon insist upon his title as tenant in common with said Massie, and therefore entitled to his said action, as your orators have been advised and believe, and such proceedings were had in said action of ejectment, that, at the January term of this honorable court, 1819, a verdict and judgment of eviction were given against your orators; and your orators, upon the trial of said action, having alleged their exception to the opinion of the court in rejecting the evidence of said deed, caused the proceedings to be removed, for reversion, to the supreme court of the U. S., and upon hearing at the last term of said court, said judgment of eviction was affirmed, and the record suit, with the mandate of said court to carry the same into execution in this court accordingly: wherefore your orators will be and are in danger of being turned out of possession, and to lose their said lands by means of the premises; and the said defendant Dun gives out in speeches and pretends, as said Graham in his life did, as herein before is charged, that your orators have no right, &c. and says that he will take possession of said lands, and hold the same as such trustee and devisee. All which actings, doings, and pretences of said defendant, and said defendant Dun, are contrary to equity and good conscience, and tend manifestly to the great wrong and injury of your orators. In tender consideration whereof, and for as much as your orators are and will be without remedy at law, relievable only in a court of equity where such matters are properly settled, to the end, therefore, that said defendants, and especially said defendant Dun, may, upon oath, true, direct, and perfect answer make to all and singular the matters aforesaid charged, and that as fully and particularly as if again repeated by way of interrogatory, and more especially, that he, said Dun, may set forth and say if he knows that said Graham is dead, and what time and where did he die, if said defendant Graham made and published any last will and testament, and what disposition, thereby, did he make of the estate and lands in controversy recovered as aforesaid at law? to whom did he devise the same, was it in trust, and to what use or uses? Is he trustee in said will named, and to his own use, or to what use? Has probate of said will been made, and the same registered in the last will and testament of said decedant, John Graham? When and where was the same done, and who has now possession of said will and the probate thereof? And that the other defendants may answer if they are the children and heirs of said decedant, Jacob Smith, and his only children living? If he died intestate, and if they recognize the contents by him made as aforesaid, and all they know about the matter in controversy? And your orators pray that said defendant, Walter Dun, may be enjoined to from proceeding upon the judgment aforesaid, and that said judgment may be enjoined first until hearing, and then perpetual; and that your honors will decree to your orators such titles to said lands, and in such portions as in equity they are entitled; and that if said defendant Dun has the legal title, that he may be compelled to make to your orators such deeds for their several respective portions as will be according to equity; and that in case your orators cannot obtain the land for any reason that they may have such other relief as the nature and circumstances of their case requires, and the writ of subpœna is prayed accordingly, may it please your honors.

HENRY CLARK,
JONATHAN CLARK.

OHIO DISTRICT—*7th Circuit Court U. S. ss.*

Henry Clark and Jonathan Clark affirmed, in open court, that the matters and things in their bill aforesaid contained, so far as stated of their own knowledge, are true; and, so far as related from the information of others, they believe the same to be true. Affirmed before me, in open court, Jan'y 8, 1822.

Att. HARVEY D. EVANS, *Clk.*

Agreement made this 2d day of June, 1803, between Jacob Smith, of one part, and Nathaniel Massie, of the other part, both of Ross county, and State of Ohio, witnesseth, that the said Jacob Smith both bargained and sold unto the said Nathaniel Massie, his heirs and assigns, the tract of land on the north side of Paint creek, whereon the said Smith now lives, in the manner following, viz: for all the bottom land on the creek in said tract that the said Smith has not before this date sold, his interest and right in the town of Amsterdam, of the lots that remain unsold, together with the mills adjoining said town; the said Massie agrees to give the said Smith, his heirs or assigns, six thousand dollars, to be paid in the manner following: to give the said Smith, his heirs or assigns, choice of two tracts of land on the Little Miami, one containing 690 acres, adjoining a tract claimed by Clement Carrington, being said Massie's part of a tract that was formerly held by Hunt and Massie, and nearly opposite Waynesville, at three dollars and forty cents per acre, amounting to two thousand three hundred and forty-six dollars; the other tract lies also on the Miami, about two miles above the former, and contains seven hundred acres, at two thousand one hundred and fifty-dollars, and in that proportion for either tract, as mentioned, be the same more or less. The said Smith is to determine his choice in eight weeks from the date hereof; the balance of the money that is owing for the purchase, to be paid as follows, viz: one thousand dollars on or before two months from the date hereof, six hundred sixty-six and two-third dollars on or before the twenty-fifth day of December next ensuing the date hereof; the balance to be paid in two equal annual payments, to commence from this date, and to end on the second day of June, 1805; and for all the remaining part of said tract that remains unsold at this date, the said Massie agrees to give acre for acre out of the tract whereon Seth Smith has purchased on Walnut creek, the conveyance of each other, their heirs or assigns, are to be made on or before the date of the last payment, that is, the second day of June, 1805, with a general warrantee. In consideration whereof, each of the parties have hereunto set their hands and seals, the day above written.

JACOB SMITH. [L. S.]
NATH. MASSIE. [L. S.]

Witness, CHARLES WILLING BYRD.

Endorsements on said agreement, to wit: The execution of this agreement by N. Massie and Jacob Smith is admitted.

CREIGHTON & BOND, *Att'y.*

Massie's article. July 17th, 1803: I make choice of the lower tract of Massie and Graham.

This indenture, made the 11th day of August, in the year one thousand eight hundred and ten, between Jacob Smith and Patience, his wife, of the county of Green, and State of Ohio, of the one part, and Jonathan Clark, of the county of Warren, and State aforesaid, of the other part, witnesseth, that the said Jacob Smith and Patience, his wife, for and in consideration of the sum of one thousand and seventy-five dollars to them in hand paid, the receipt whereof they do hereby acknowledge, and forever acquit and discharge the said Jonathan Clark, his heirs, executors, and administrators, have granted, bargained, sold, aliened, and confirmed, and by these presents do grant, bargain, sell, alien, and confirm,

unto the said Jonathan Clark, his heirs and assigns forever, all that tract or parcel of land lying and being in the county of Warren, and State aforesaid, beginning at a sycamore, elm, and red haw, on the bank of the Little Miami river; thence, down said river, with the meanders thereof, to a hackberry and locust, corner to Ph. Good's land; thence, from river, S. 39°, 15 E, 396 po. to an iron wood, dogwood, and sugar tree, corner to Good's; thence, N. 51, E. 122 5-10 po. to an ash and two sugar trees; thence, N. 39°, 15 W. 100 pr. 2 braches and sugar, N. 51, E. 11 pr.; thence, N. 39, 15 W. 63 pr. to a hackberry, blue ash, and red bud; thence, S. 51, W. 11 pr. to a blue ash, buckeye, and red elm; thence, N. 39°, 15 W. 134 pr. to the beginning, containing three hundred and six and seventy-five-hundreths acres; bounded, south by Philip Good's land, east by John Griffith's land, north by Henry Clark's land, west on the river; together with all improvements, water courses, profits and appurtenances whatsoever, to the said premises belonging, or in any wise appertaining; to have and to hold the lands hereby conveyed, with all and singular the premises, with every part and parcel thereof, with every of the appurtenances, unto the said Jonathan Clark, his heirs and assigns forever, to his and their only proper use and behoof, and for no other intent or purpose whatsoever; and the said Jacob Smith and Patience his wife, for themselves, their heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said Jonathan Clark, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said Jonathan Clark, his heirs and assigns, against him, the said Jacob Smith, and Patience his wife, and their heirs, and all and every person claiming from, by, or under him or them, doth and will warrant and forever defend, by these presents; and the said Jacob Smith and Patience his wife, and their heirs, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said Jonathan Clark, his heirs and assigns, against him the said Jacob Smith, and Patience his wife, and their heirs, and all and every other person or persons whatsoever, doth and will warrant and forever defend, by these presents. In witness whereof, the said Jacob Smith and Patience his wife, have hereunto set their hands and seals, the day and year above written.

JACOB SMITH. [L. S.]
PATIENCE SMITH. [L. S.]

Signed, sealed, and delivered, in the presence of
JOB PUGH, GEORGE HAWORTH.

STATE OF OHIO, *Warren County, ss.*

Be it remembered that on the 11th August, 1810, personally came the within named Jacob Smith before me, one of the justices of the peace of Wayne township, and acknowledged the within signed to be his act and deed, for the purposes within mentioned; and, at the same time and place, came the aforesaid mentioned Patience Smith, and being by me privately examined apart from and out of the hearing of her husband, and also acknowledged the above signing and sealing to be her voluntary act and deed, and that she relinquished her right of dower to the foregoing land of her own accord, and without fear or threats from her husband. Given under my hand and seal.

THOMAS REAGA, *J. P.* [L. S.]

Received for record 6th February, 1811; recorded the same day in book C, pages 252, 253.

ENOS WILLIAMS, *R. W. C.*

This indenture, made the eleventh day of August, in the year one thousand eight hundred and ten, between Jacob Smith and Patience his wife, of Green county, and State of Ohio, of the one part, and Henry Clark, of the county of Warren and State aforesaid, of the other part, witnesseth, that the said Jacob

Smith, and Patience his wife, for and in consideration of the sum of one thousand and fifty-two dollars to them in hand paid, the receipt whereof they do hereby acknowledge, and forever acquit and discharge the said Henry Clark, his heirs, executors, and administrators, have granted, bargained, sold, alien, and confirmed, and by these presents do grant, bargain, sell, alien, and confirm, unto the said Henry Clark, his heirs and assigns, forever, all that tract or parcel of land lying and being in the county of Warren, and State aforesaid, beginning at a sycamore and two box elders on the east bank of the Little Miami river; thence, down said river, with the meanders thereof, to a sycamore elm and red haw, dividing corner, to Henry and Jonathan Clark's; thence, from the river, S. 39°, 15 E. 134 pr. to a blue ash, buckeye and red elm; thence, N. 51, E. 11 pr. to a hackberry blue ash, and red bud; thence, S. 39° 15 E. 63 poles, to 2 sugar trees and beach; thence, S. 51, W. 11 pr. to beeches and sugar; thence, S. 39°, 15 E. 100 pr. to a beech, dogwood, and black gum; thence, N. 51°, E. 117 pr. to 2 sugars; thence, N. 39, W. 473 5-10 pr. to the beginning, containing two hundred and ninety-nine and twenty-five-hundredths acres; bounded, south, by Jonathan Clark's and John Griffith's land, on the east, by Jordan Whitson's land, and the north by Robert Furnace's land, on the west, by the Little Miami river, together with all improvements, water courses, profits and appurtenances whatsoever to the said premises belonging, or in any wise appertaining; to have and to hold the lands hereby conveyed, with all and singular the premises, with every part and parcel thereof, with every of the appurtenances, unto the said Henry Clark, his heirs and assigns forever, to his and their only proper use and behoof, and for no other interest or purpose whatsoever; and the said Jacob Smith and Patience his wife, for themselves, their heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said Henry Clark, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said Henry Clark, his heirs and assigns, against him, the said Jacob Smith, and Patience his wife, and their heirs, and all and every person claiming from, by, or under him or them, doth and will warrant and ever defend, by these presents. And the said Jacob Smith and Patience his wife, and their heirs, all and singular the premises hereby bargained and sold, with the appurtenances unto the said Henry Clark, his heirs and assigns, against him, the said Jacob Smith and Patience his wife, and their heirs, and all and every other person or persons whatsoever, doth and will warrant and forever defend by these presents. In witness whereof, the said Jacob Smith and Patience his wife, have hereunto set their hands and seals, the day and year above written.

JACOB SMITH. [L. S.]
PATIENCE SMITH. [L. S.]

Signed, sealed, and delivered, in the presence of
JOB PUGH, GEORGE HAWORTH.

STATE OF OHIO, *Warren County, ss.*

Be it remembered, that, on 11th August, 1810, personally came the within named Jacob Smith before me, one of the justices of the peace of Wayne township, and acknowledged the within signing to be his act and deed, for the uses and purposes therein mentioned; and, at the same time and place, came the aforesaid Patience Smith, and being by me privately examined apart from, and out of sight of her husband, also acknowledged the above signing and sealing to be her voluntary act and deed, and that she relinquished her right of dower to the foregoing land, of her own accord, and without fear or threats from her husband. Given under my hand and seal.

THOMAS REAGAN, *J. Peace.* [L. S.]

Received for record the 6th February, 1811. Recorded the same day, in book C, pages 253 and 254.

ENOS WILLIAMS, *R. W. C.*

This indenture, made this seventh day of March, in the year of our Lord one thousand eight hundred and eleven, between Jacob Smith and Patience his wife, of the county of Green, and State of Ohio, of the one part, and John Graham, of the city of Richmond, and State of Virginia, of the other part, witnesseth, that the said Jacob Smith and Patience his wife, for and in consideration of the sum of five thousand dollars, to them in hand paid, the receipt whereof they do hereby acknowledged, and forever acquit and discharge the said John Graham, his heirs, executors, and administrators, have granted, bargained, sold, aliened, and confirmed, and by these presents do grant, bargain, sell, alien, and confirm unto the said John Graham, his heirs and assigns forever, all that tract or parcel of land lying and being in the county of Ross, and State of Ohio, on the upper side of Paint creek, and bounded as follows, to wit: beginning at a sugar tree, pea locust, and hackberry, upper corner on the creek, to Strother Suttle's survey, No. 1914; thence, north, thirty-two degrees thirty minutes, west ninety-seven poles, to a hackberry, ash, and hickory, in the old line; thence, north, twenty-three degrees, east seventy-five poles, to a hackberry, burr, oak, and box elder; thence, north, sixty-one degrees, west forty poles, to a sugar tree and mulberry; thence, north, fiifty-seven degrees thirty minutes east two poles to a beach; thence, north, thirty-two degrees thirty-nine minutes, west one hundred and forty-four and three quarter poles to two beeches and a poplar; thence, south, fifty-seven degrees thirty minutes, west forty-five poles to a beech, in the old line; thence, with said line, northwardly, two degrees thirty minutes, west two hundred and thirty-five poles to three sugar trees, upper back corner to the original survey; thence, north, fifty-three degrees, east one hundred and forty-seven poles to two beeches and a horn beam, in the old line; thence, south, eighty-one degrees, east two hundred and ninety-six poles, to a beech and poplar, in the upper line of Miles King's survey, No. 532, sixty-eight poles from his upper back corner; thence, south, thirty degrees, west ninety-six poles to two white walnuts; thence, north, sixty-eight degrees, west forty-eight poles to a beech, small walnut and ash; thence, south, twenty-two degrees, west two hundred and twenty-three poles, passing the most northerly corner of the town of Amsterdam, at one hundred and three poles, and, with the lines of the same, to the most westerly corner thereof; thence, with the lines of said town, to Paint creek; thence, up the creek, with the meanders thereof, and binding thereon, south forty-eight degrees, west eighteen poles; thence, south, seven degrees, west thirty-eight poles; thence, south, twenty-seven degrees, east thirty-five poles; thence, south, forty-five degrees, east fourteen poles; thence, south, sixty-eight degrees, east sixteen poles; thence, south, fifty-three degrees, east twenty-six poles to a black walnut, lower corner to Ayre's twelve acres of land; thence, with his line, south forty-eight poles, to a honey locust on the bank of the creek, upper corner to Ayre's said land; thence, up the creek, and binding thereon, to the beginning, containing five hundred and twenty-eight acres of land, be the same more or less, being part of a large tract of land which was entered and surveyed for Strother Suttle, and distinguished on the principal surveyor's books by number nineteen hundred and fourteen, which said survey was patented to Meredith Helin, and, by the said Helin and his wife, conveyed in part to the said Jacob Smith, and which part includes the five hundred and twenty-eight acres now conveyed, as will more fully appear by the records in the county of Ross, and State of Ohio, together with all the appurtenances to the said premises belonging, or in any wise appertaining, and all the estate, right, title, claim, or demand, of them, the said Jacob Smith and Patience his wife, of, in, and to the same; and to have and to hold the lands hereby conveyed, with all and singular the

premises, and every part and parcel thereof, with every of the appurtenances, unto the said John Graham, his heirs and assigns, forever; and the said Jacob Smith, and Patience his wife, for themselves, their heirs, executors, and administrators, do covenant, promise, and agree, to and with the said John Graham, his heirs and assigns, by these presents, that the premises before mentioned now are, and forever hereafter shall remain, free of and from all incumbrances whatsoever, done or suffered to be done by them, the said Jacob Smith and Patience his wife; and the said Jacob Smith and Patience his wife, and their heirs, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said John Graham, his heirs and assigns, against them, the said Jacob Smith and Patience his wife, and all and every other person or persons whatsoever, do, and will warrant and forever defend by these presents. In witness whereof, we, the said Jacob Smith and Patience his wife, have hereunto set our hands and affixed our seals, the day and year first in this indenture written. Signed, sealed, and delivered in the presence of us. The erasure in the twenty-eighth line of this indenture, where the word forty is now written, was made before the signing and sealing of these presents.

JACOB SMITH. [L. S.]
PATIENCE SMITH. [L. S.]

Attest:

her
JACOB HANES, NANCY ⋈ HANES.
mark

STATE OF OHIO, *Greene County.*

I, Jacob Hanes, one of the associate judges for the county aforesaid, doth hereby certify that Jacob Smith personally came before me this day, and acknowledged the above indenture to be his act and deed; and, on the same day, came Patience Smith his wife, she being privately examined as the law directs, relinquished her right of dower to the premises above mentioned, without any coercion or compulsion of her said husband. Given under my hand and seal this 7th day of March, 1812.

JACOB HANES. [L. S.]

Rec'd 16th March, 1812.

STATE OF OHIO, *Ross County, ss.*

I, Samuel Tagart, recorder in and for said county, do certify that the foregoing is a true copy of the deed from Jacob Smith and Patience his wife, to John Graham, as it stands recorded in this office, in book N, pages 387, 388, and 389. In testimony whereof, I have hereunto set my name, and affixed the seal of said office, at Chillicothe, the 22d day of December, 1823.

SAM'L TARGART.

On motion of the court to grant a bill of injunction in the proceedings of a judgment in ejectment recovered by the lessee of John Graham against the aforesaid complainants; this day came, as well the complainants by their counsel, as the said Walter Dun and others, by their counsel; and the complainants' bill having been read in court: whereupon it is ordered that an injunction be granted agreeably to the prayer of the complainants' bill, upon their entering into bond, with security, in the sum of one thousand dollars, conditioned as the law directs. And thereupon this cause was continued; and afterwards, to wit: on the twentieth day of February, in the year of our Lord one thousand eight hundred and twenty-two, the following subpœna in chancery issued out of the clerk's office of said court, directed to the marshal, to wit:

THE UNITED STATES OF AMERICA—*District of Ohio, ss.*

To the Marshal of the district aforesaid, greeting:

We command you to summon Walter Dun and Joel Dalby and Elizabeth his wife, late Elizabeth Smith, James Collier and Rachel his wife, late Rachel Smith, John Smith, and Samuel Kyle and Nancy his wife, late Nancy Smith, George Taylor and Polly his wife, late Polly Smith, Josiah B. Smith, Jacob Smith, Henry Snyder and Sarah his wife, late Sarah Smith, Jacob Stanley and Lydia his wife, late Lydia Smith, Isaac Smith, Seth Smith, and Edward Flood and Hannah his wife, late Hannah Smith, if they be found in your bailwick, to appear before the judges of the circuit court of the United States for the seventh circuit and district of Ohio aforesaid, at Columbus, on the first Monday in the month of September next, to answer a bill in chancery exhibited against them by Henry Clark, Jonathan Clark, and Mordecai McKinsey; and this they shall in no wise omit under the penalty of the law; and have then there this writ.

Witness the honorable John Marshall, chief justice of the United States, this twentieth day of February, one thousand eight hundred and twenty-two, and in the forty-sixth year of the independence of the United States of America.

Att. HARVEY D. EVANS, *Clk.* [L. S.]

This is to stay and enjoin all further proceedings upon a judgment in ejectment, obtained by the lessee of John Graham against the witnin named complainants, until the same can be heard in equity. Bond given, with Thomas W. Furnace security, in the sum of one thousand dollars. Feb'y 20th, 1822.

Att. HARVEY D. EVANS, *Clk.*

And afterwards, to wit: at the September term of said court, in the year of our Lord one thousand eight hundred and twenty-two, came the marshal, and made return of the foregoing writ of subpœna as follows, to wit: Summoned Walter Dun 17th of June, 1822, and gave him copy of bill.

WM. DOHERTY, *Marshal.*

Served on the within named defendants, Joel Dalby and Elizabeth his wife, James Collier and Rachel his wife, John Smith, Samuel Kyle and Nancy his wife, Josiah B. Smith, Jacob Smith, Henry Snyder and Sarah his wife, Jacob Stanley and Lydia his wife, Isaac Smith, Seth Smith, Edward Flood and Hannah his wife, defendants; George Taylor and Polly his wife, not found.

WM. VANCE, *Deputy Marshal.*

And thereupon, the said Walter Dun, by his counsel, filed in court here his answer as follows, to wit: The answer of Walter Dun, devisee in trust under, and executor of the last will and testament of John Graham, deceased, to the bill of complaint of Henry Clark, Jonathan Clark, and Mordecai McKinsey, exhibited against him in the honorable the circuit court of the United States for the seventh circuit and district of Ohio, in which, also, the heirs of one Jacob Smith are made defendants. This deft. now, and at all times hereafter, saving and reserving to himself all exceptions, &c. to the said bill, for answer, says: He is informed and believes that his said testator, John Graham, did, in his life time, prosecute his action of ejectment on the law side of this honorable court against the said complainants, and recovered a judgment against them for the tracts of land named in said bill, and that that judgment is the same against the further prosecution of which the injunction is granted upon the prayer of the said complainants. In further answering, this defendant states that his said testator departed this life in the month of September, in the year 1820; that he made a will, which has been duly proven agreeably to the laws of the State of Virginia, where the said testator lived and died; that this defendant was named therein as executor and devisee, in trust, of all the testator's lands and real estate in the

State of Ohio, and having accepted said office and trust, was duly qualified, and hath regularly obtained a probate of the said last will and testament, to a certified copy herewith filed, reference is made, and the same asked to be taken as a part hereof. This defendant knows nothing of the sale or exchange of lands made by and between Nathaniel Massie and Jacob Smith, mentioned in said bill, nor does he know or admit that his testator was ever advised of any such sale or exchange, or that his said testator was in any wise, or at any time, privy to the said sale or exchange, or that he at any time authorized, assented to, approved of, or confirmed the same, but of either and all these facts requires proof from the said complainants. This defendant, in further answering, insist that it manifestly appears from the complainants' said bill, that the contract was made by the said Nathaniel Massie in his own right, and that parol proof cannot be admitted to enlarge, or in any wise to alter or change, the contract. He further insists that if, in truth, a power of attorney was executed by his testator to the said Nathaniel Massie at the time stated in said bill, (but which this defendant requires proof of,) it is equally evident from the said bill, that the said power of attorney was given several years subsequent to the pretended sale to the said Jacob Smith, and this defendant only supposes that such a power of attorney, altogether prospective in its language, could not of itself confirm previous contracts and sales; and, as it relates to the pretended deed from the said Nathaniel Massie to the said Jacob Smith, this defendant insists that the same was and is inoperative and void, not only because it did not contain the requisites of a deed under the law of the State of Ohio, but also, because, at the alleged date of the said deed, the said Nathaniel Massie's power was revoked, the said John Graham having, on the 23d day of February, in the year 1807, executed to one Robert Meanes a power of attorney to sell and convey his lands in Ohio, and in the same, expressly revoked and annulled any and all powers of attorney for the conveyance of land in Ohio by him before granted; a copy of which said power of attorney last mentioned, is herewith filed, and the same is prayed to be taken as a part hereof.

This defendant neither knows nor admits that the said Nathaniel Massie ever advised his said testator of the alleged sale to Jacob Smith, nor that the said Nathaniel Massie ever accounted with his said testator for the said land, or for any part thereof; nor that he or his said testator ever, at any time, received either from the said Nathaniel Massie, said Jacob Smith, or from any other person or source whatever, any manner of consideration for the said land claimed by the said complainants, or for any part thereof; but of either or all of these facts requires proof. He admits the conveyance of five hundred and twenty-eight acres of land on Paint creek to his said testator by Jacob Smith and wife, on the 7th day of March, 1811, but denies that the same was made for the purpose alleged by said complainants, or with any knowledge on the part of the said testator or of this defendant that it was so intended. He also denies that the said conveyance was intended in any wise to confirm or strengthen the pretended or alleged sale by the said Nathaniel Massie to the said Jacob Smith, and insist that the said conveyance was procured from the said Jacob Smith and wife by this defendant, (at the time thereof, the agent and attorney in fact of the said testator,) under the following circumstances, to wit: In July, 1807, the said Nathaniel Massie professing to be seized in fee simple, and possessed of one thousand acres of land, including the falls of Paint creek, and being parts of of two original surveys, one in his own name, No. 5,011, the other in the name of Strother Suttle, No. 1,914, said last survey, including the land, or part of the same, purchased by Nathaniel Massie of said Jacob Smith, did, together with Susan Massie his wife, convey the same to the said testator John Graham, for valuable consideration; some considerable time after which, it being discovered that, at the time of the said Nathaniel Massie's conveyance, he had not obtained a patent from the United States for the said survey No. 5,011, and that he had

not received from the said Jacob Smith any conveyance of such part of the said one thousand acres, as by a fair construction of the deed for the same might be included in the said survey No. 1,914, in order to confirm the the conveyance of 1807, said Nathaniel Massie did, about the 13th day of December, 1810, (having then obtained a patent,) execute a deed of confirmation to the said John Graham, and also directed the said Jacob Smith to execute to the said John Graham a conveyance for five hundred and twenty-eight acres of land, part of the said survey No. 1,914, supposing that that quantity might be included in the said deed of 1807; and, accordingly, this defendant, as the agent of the said John Graham, received from the said Jacob Smith the aforementioned conveyance for five hundred and twenty-eight acres of land as confirmatory of the said conveyance of 1807, so far only as, by a proper construction of the calls thereof, the said five hundred and twenty-eight acres might be included; and this honorable court hath already put a construction on the calls of the said conveyance of 1807, in a suit in chancery where the said John Graham was complainant and the heirs of the said Nathaniel Massie were defendants, and by which the greater part of the said five hundred and twenty-eight acres are excluded. This defendant states that the said deed was received directly from the said Jacob Smith to accommodate said Nathaniel Massie, and to save a circuity of conveyance, and denies that any consideration, of any kind, was given, or understood to be given, by the said testator, or this defendant, to the said Jacob Smith to procure said conveyance, or that the said conveyance was received from the said Jacob Smith with any knowledge of, on the part of said testator or this defendant, of the consideration between said Nathaniel Massie and the said Jacob Smith, or with any view or intention of confirming the sale of the land claimed by complainants, or with any knowledge that the same had been sold by said Massie to the said Jacob Smith. This defendant denies all fraud and unlawful combination charged against him, without that, that any matter or thing in the complainants' said bill contained, material for this defendant to make answer to, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true; and, having answered, humbly prays this honorable court to dissolve the said injunction of the said complainants, and admit this defendant to the benefits of the said judgment at law; and, finally, that he be dismissed hence with his reasonable costs and charges in this behalf most wrongfully and unjustly sustained.

WALTER DUN, *Executor of, and Devisee in trust under, the last will and testament of John Graham, deceased, by*
CREIGHTON & BOND, *his Solicitors.*

STATE OF OHIO, *Ross County, sct.*

Personally appears before me, the subscriber, a justice of the peace in and for the county aforesaid, Walter Dun, who, as executor and devisee, in trust, of John Graham, deceased, executed the foregoing answer, and, being by me duly sworn, says that the several matters and things in said answer contained, so far as stated from his own knowledge, are true; and, so far as stated from the knowledge of others, he believes them to be true.

WALTER DUN, *Executor of, and Devisee in trust under, the last will and testament of John Graham, deceased.*

Subscribed and sworn to, this 5th day of July, 1822.

PETER PATTERSON, *J. Peace.* [L. S.]

In the name of God, amen. I, John Graham, of the city of Richmond, in the State of Virginia, do make, ordain, publish, and declare, my last will and testament as follows: Imprimus, I give and bequeath to Mrs. Dun, wife of my

nephew Walter Dun of the State of Ohio, my silver repeating watch, as a mark of my esteem for her. Item: I give and bequeath to John Brown, son of John Brown, my silver patent lever watch. Item: I devise and order that my slave Jasper shall be emancipated and set free by my executor, so soon after the expiration of the present year, 1820, as he, the said Jasper, may request, and from the day of his emancipation, that my executor pay him the yearly sum of fifty dollars for and during the term of ten years only, after which, no yearly sum whatever is to be paid him, but, at that period, I give him a legacy of two hundred and fifty dollars in full of what I mean to give him. As I purchased the said Jasper prior to the passage of the law which forbids emancipated negroes to remain in Virginia, and as it was stipulated in the bill of sale made to me for him that he should be emancipated after the said present year of 1820, I presume he will be entitled to remain in Virginia after he is emancipated, but if I am mistaken in this, I still mean he shall be emancipated whenever he shall, after the said present year 1820, request it. Item: I direct and order that my slave Mary, (wife of the said Jasper,) shall be emancipated by my executor whenever she may request it; but, in the mean time, that she may live with her husband if she chooses to do so; and, from the day of her emancipation, I direct that my executor shall pay her the yearly sum of thirty dollars for her separate use, free from the control of her husband, for the term of fifteen years only, after which, no yearly sum whatever is to be paid her, but, at that period, I give her a legacy of one hundred and fifty dollars in full of what I mean to give her. Item: I give and bequeath to my freedman, Reuben Price, one thousand dollars, with lawful interest from the end of two years after my death, if the same be not then paid. I also direct my executor to pay him whatever balance may appear to be due him by my books. Item: I desire that my slaves Lucy, the cook, and her five daughters, Aggy, Jeanny, Betsey, Fanny, and Mary Anne, together with such of their children as shall not exceed four years of age at the time of sale, may be sold to such persons as they may respectively choose, and, as an inducement to such persons to buy them, I direct that two-thirds of their respective value, according to the estimation of Wm. Fulcher, or some other competent judge, shall be accepted for them. Item: I give and bequeath to Robert Chappell, son of the late Robert Chappell, of the county of Lunenburgh, five thousand dollars out of the proceeds of the sales, hereinafter directed, of my lands and real estate situate in the State of Virginia: and, if the same be not paid within two years after my death, to bear interest from the end of twelve months after my decease. Item: I give and bequeath to Amy Williams thirty dollars per annum from my death until the year 1832, when the same is to cease, and it is to cease, also, if she dies before that period. Item: I give and bequeath to Thomas Mack, who is near three years old, and resides with Mrs. Smith, widow of William Smith, of Orange county, one hundred and fifty dollars per annum for his maintenance and education, until he arrives at the age of fourteen years, and, after that time, I give him two hundred and fifty dollars per annum for the same purpose, until he arrives at the age of twenty-one years, after which, no yearly sum whatever is to be paid him, but, at that period, I give him a legacy of two thousand dollars out of the said proceeds of the sales of my land and real estate in the State of Virginia; but, if he dies before his age of twenty-one years, without leaving lawful issue, the further payment of the said yearly sums is to cease at his death, and the said legacy of two thousand dollars is not, in that event, to be paid, but is to constitute part of the residuum of my estate, and to go as that is hereinafter directed to go. Item: I give and bequeath to Margaret Glen, who is about four months old, and resides with Mrs. Eliza Glenn, of Orange county, in whose care she was put by Mrs. Smith, one hundred and twenty dollars per annum for her maintenance and education, until she arrives to the age of fourteen years, and, after that time, I give her two hundred dollars per annum for the purposes aforesaid, until she arrives to the age of twenty-one years, after which time, no

yearly sum whatever is to be paid her, but, at that period, I give her a legacy of one thousand dollars out of the said proceeds of the sales of my lands and real estate in Virginia; but, should she die before she attains to the age of twenty-one years, without leaving lawful issue, the further payment of the said yearly sum is to cease at her death, and the said legacy of one thousand dollars is not, in that event, to be paid, but to constitute part of the residuum of my estate, and to go as that is hereinafter directed to go. Item: I give and bequeath to my said nephew Walter Dun, all my wearing apparel, my beds, with their furniture, my library, and all my household and kitchen furniture, also, the two horses, the two cows, and all the tools and carriages, together with the forage for the said horses and cows which I have in the city of Richmond; also, all the stock of liquors which may be found in my dwelling-house in said city of Richmond. The subjects of this devise are not to be inventoried. Item: I direct that one hogshead of molasses, six barrels of herring, and one thousand pounds of pork or bacon, out of the stock of those artitles which I leave at my death, shall be kept for the use of my family. Item: I devise and order that all the rest of my personal estate shall be converted, by my executor, into money, by a sale (at such time or times as he may think proper,) of such parts thereof as shall not consist of money, or securities for money, and by calling in, receiving, and collecting all such part or parts thereof as consists in moneys, debts, or securities for money, and that the proceeds thereof shall constitute part of the residuum of my estate, and be disposed of in the manner hereinafter mentioned. Item: I give and devise all my lands and real estate situate in the State of Virginia to the said Walter Dun and Daniel Call, their heirs and assigns, forever, in trust, for the purposes of this will. Item: I constitute, make, and appoint the said Walter Dun executor of this my last will and testament, and do devise, order and direct, that my said executor shall sell, either for cash or upon credit, as he may think fit, all my lands and real estate situate, lying, and being in the State of Virginia, and, out of the proceeds of the sales, tha he pay 1. The charges of the sales; 2, the expenses of my funeral; 3, my just debts; 4, the said sums of money bequeathed to the said Jasper; 5; the said sums of money bequeathed to the said Mary, wife of the said Jasper; 6, the said sums of money and interest bequeathed to Reuben Price; 7, the said sum of money and interest bequeathed to Robert Chappell; 8, the said sums of money bequeathed to Amy Williams; 9, the said sums of money bequeathed to Thomas Mack; 10, the said sums of money bequeathed to Margaret Glenn; 11, the expenses attending the administration, care, and management of my estate, including the salaries and expenses of such clerks and agents as my executor may think proper to employ therein; 12, the commissions hereinafter allowed to my executor; 13, the balance to the persons, and in the manner, hereinafter mentioned; but, if the proceeds of the said sales of my lands and real estate in Virginia should not prove adequate to the payments and disbursements aforesaid, the deficiency to be made up out of the residue of my estate, which is not to be applied for that purpose until the proceeds of the sales of my lands and real estate in Virginia are all exhausted. Item: I give and devise all my lands and real estate situate in the State of Ohio, to the said Walter Dun, his heirs and assigns, forever, upon trust, to sell the same either for cash or upon credit, and at such time or times as he may think proper, and to apply the moneys arising therefrom in the manner hereinafter directed. Item: Instead of the usual commission in such cases, I give and allow to the acting executor, for the time being, of this my last will and testament, a commission of three and one-eighth per cent. upon all sales made by him upon my estate; of three and one-eighth per cent. upon all moneys and sums received by him from the sales of my estate, other than those arising from the sale of coals, upon which he is to be allowed two per cent. upon receipts, and two per cent. upon disbursements; of three and one-eighth per cent. upon all sums received by him from the debts due to me; and of three and one-eighth per cent. upon

all sums paid by him to my credit and legatees, and upon all his other disbursements in and about my estate and its affairs. Item: As to all the residuum or residue of my estate, consisting of the said balance, if any, of the proceeds of the sales of my lands and real estate situate in Virginia, of the proceeds of the sales of my personal estate, of the moneys belonging to me of the debts due to me, and the moneys arise therefrom, of the proceeds of the sales of my lands and real estate situate in the State of Ohio, and of all other property, effects, and estate, not herein before already disposed of, I give, devise, and dispose of the same as follows, that is to say: firstly, I give, devise, and bequeath three-sixteenth parts thereof to my nephew John McMurtrie, of Port Glasgow, in Scotland, his heirs and assigns, forever, if he be living at my death, if not, then to his issue alive at the time of my decease, their heirs and assigns forever; if none, then to my sister Elizabeth Graham, widow of James Dun, of Kelsyth, in Scotland, my sister Jane Graham, widow of Robert Wilson, of Banton, near Kelsyth, in Scotland, and the issue of my deceased sister Helen Graham, widow of Patrick Hutcheson, of Paisley, in Scotland, their heirs and assigns forever; that is to say, the said Elizabeth Graham, if she be living, or, if she be dead, her representatives to take one-third; the said Jean Graham, if she be living, or, if she be dead, her representatives to take one-third, and the issue of the said Helen Graham to take the other third; secondly, I give, devise, and bequeath, three-sixteenth parts of the said residuum to my said sister Jean Graham, widow of the said Robert Wilson, her heirs and assigns, forever, if she be living at the time of my death, if not, then to her issue alive at the time of my death, their heirs and assigns forever; if none, then to the said John McMurtrie, Elizabeth Graham, and the issue of the said Helen Graham, their heirs and assigns forever; that is to say, the said John McMurtrie, if he be living, or, if he be dead, his representatives to take one-third, the said Elizabeth Graham, if she be living, or, if she be dead, her representatives to take one-third, and the issue of the said Helen Graham to take the other third; thirdly, I give, devise, and bequeath, five-sixteenth parts of the said residuum to the issue of my said deceased sister Helen Graham, who may be living at the time of my death, their heirs and assigns forever; but, if there should be no such issue, then to the said John McMurtrie, Elizabeth Graham, and Jean Graham, their heirs and assigns, forever; that is to say, the said John McMurtrie, if he be living, if not, his representatives to take one-third, the said Elizabeth Graham, if she be living, if not, her representatives to take one-third, and the said Jean Graham, if she be living, if not, her representatives to take other third; fourthly, I give, devise, and bequeath, five-sixteenth parts of the said residuum to my said sister Elizabeth Graham, widow of James Dun, her heirs and assigns, forever, if she be living at the time of my death, if not, then to all her children who may be then living, and the issue of such of them as may be dead, (such issue taking the part or parts only which their parents, respectively, if living, would have taken,) their heirs and assigns forever. Item: should the said Walter Dun fail, from any cause whatever, to qualify as executor of this will, or, having qualified, should depart this life, or be removed from the executorship before the sales aforesaid are all made, the moneys arising therefrom received and paid over, and the administration of my estate completed, then I appoint the said Daniel Call executor of this will in his room, and authorize and direct him to make such sales of my estate as remains to be made, to receive the unpaid moneys arising from the sales made by the said Walter Dun, as well as the moneys arising from the sales by himself, and to apply and pay them in manner above mentioned, to perform all the trust, duties, and acts prescribed by this will to the said Walter Dun, and remaining to be performed, to fulfil in all respects the injunctions and provisions of this will, to complete the administration of my estate, and to receive and take commissions for the same as above mentioned. But if the said Daniel Call should fail, from any cause whatever, to qualify as executor, as

aforesaid, or, having qualified, should depart this life, or be removed from the executorship before the sales aforesaid are all made, the moneys arising therefrom received and paid over, and the administration of my estate completed, then I do appoint my nephew Robert Dun, of the State of Ohio, executor of this will, and authorize and direct him to make such sales of my estate as remain to be made, to receive the unpaid moneys arising from the sales made by the said Walter Dun and Daniel Call, or either of them, and to apply and pay them in manner above mentioned, to perform all the trusts, duties, and acts, prescribed by this will to the said Walter Dun and Daniel Call, or to either of them, and remaining to be performed, to fulfil in all respects the injunctions and provisions of this will, to complete the administration of my estate, and to receive and take commissions for the same as above mentioned, as well as upon the moneys arising from the sales made by himself, which last named moneys he is likewise to receive and apply and pay in the manner above directed. Item: I desire it to be understood that the appointment of the said Walter Dun and Robert Dun, executors above mentioned, is not to release them from any debt or debts which they or either of them, may owe to, at the time of my death, or to my estate afterwards. Lastly, I direct that my executors shall not, nor shall either of them be required to give security for their administration of my estate. In witness whereof, I have hereunto set my hand and affixed my seal this —— day of July, in the year of our Lord one thousand eight hundred and twenty.

JNO. GRAHAM. [L. S.]

Signed, sealed, published, and declared by the said John Graham, the testator, as and for his last will and testament, in presence of us, who hereto, in his presence, and at his request, have respectively subscribed our names as witnesses thereof.

A. P. UPHAM,
JOSEPH MAYS, Jr.
J. MANON.

A codicil to be added to, and be part of, the last will and testament of me, John Graham, hereto annexed. I desire that my slave William, son of Aggy, shall be taught the house carpenter's trade under my slave Nat; and if the said William behaves well, that he may be sold to the person he chooses, or his father Jasper may recommend, and, as an inducement to such person to purchase him, I direct that my executors shall take two-thirds of his value for him; and I do hereby ratify and confirm my said last will and testament in all other respects. In witness whereof, I have hereuuto set my hand and affixed my seal, this 21st day of September, in the year of our Lord one thousand eight hundred and twenty.

JNO. GRAHAM. [L. S.]

Signed, sealed, published, and declared, by the said John Graham, the testator, as and for a codicile to his said last will and testament, hereto annexed, in presence of us, who, in his presence, and at his request, have hereunto respectively signed our names as witnesses thereof.

WM. MACKENZIE,
JOHN GORDON,
ROB'T BELL.

At a superior court of law for Henrico county, held at the capitol in the city of Richmond, the 26th day of October, 1820, this last will and testament of John Graham, deceased, was proved by the oaths of A. P. Upham and *and* Joseph Mays, jr. witnesses thereto, and the codicil to the said will annexed was proved by the oaths of William Mackenzie and Robert Bell, witnesses to the said codicil; and thereupon the said will and codicil were ordered to be recorded; and, on the motion of Walter Dun, the executor in the said will named, who made oath thereto according to law, and entered into and acknowledged a bond in

the penalty of three hundred thousand dollars, conditioned as the law directs, (without security, the will directing that none should be required of him,) certificate is granted him for obtaining a probate of the said will and codicil in due form.

HENRICO COUNTY, *to wit:*

I, John Robinson, clerk of the superior court of law for the said county of Henrico, in the State of Virginia, do hereby certify that the foregoing is a true transcript from the records of the said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said superior court, this 26th day of March, in the year 1822.

J. ROBINSON. [L. S.]

STATE OF VIRGINIA, *Henrico County, to wit:*

I, William Brockenbrough, only judge of the superior court of law for the said county of Henrico, in the State of Virginia, do hereby certify that the aforegoing attestation of John Robinson, clerk of the said court, is in due form. Given under my hand this twenty-sixth day of March, in the year 1822.

WM. BROCKENBROUGH.

Know all men by these presents, that I, John Graham, of the city of Richmond, and State of Virginia, have ordained, constituted, made, and in my place put, my friend Robert Means, of the city of Richmond, my true, full, and lawful attorney; and to the said Robert Means have given and granted my full power and authority to bargain, sell, and convey for me, and in my name, all my estate, right, title, and interest, of, in, and to, all my lands and tenements situate in the State of Ohio, to any person or persons whatsoever, according to the laws of the said State of Ohio, to have and to hold the said person or persons whatsoever, their heirs and assigns, or the heirs or assigns of any or either of them, forever, to the only proper use and behoof of the said person or persons to whom the premises shall be so bargained, sold, and conveyed, as aforesaid, their heirs and assigns forever; and the money arising from such sales to receive and pay to me, giving and granting to my said attorney, my full power and authority in the premises, to do, execute, perform, and fulfil all and sigular thing and things whatsoever, which shall or may be expedient and necessary concerning the premises as thoroughly and completely as if I myself were personally present at the doing and performing thereof; hereby ratifying and confirming, by these presents, whatever my said attorney shall do, in and about the premises, in my behalf, for me and in my name. And I, John Graham, have revoked and annulled, and *and* by these presents do revoke and annul, all powers of attorney heretofore granted for conveying lands and tenements in the State of Ohio. In witness whereof, I have hereunto affixed my hand and seal in the city of Richmond, this twenty-third day of February, one thousand eight hundred and seven years.

JOHN GRAHAM. [L. S.]

Signed, sealed, and acknowledged, in the presence of
ARCHIBALD BLAIR, BEVERLY BLAIR, JOHN TRAROU.

VIRGINIA, *to wit:*

Be it known that, on this twenty-third day of February, eighteen hundred and seven, before me, Archibald Blair, notary public for the city of Richmond, came John Graham, named in the foregoing power of attorney, and acknowledged the same to be his act and deed.

In testimony whereof, I have hereunto set my hand and seal of office, at Richmond, this twenty-third of February, 1807.

A. BLAIR, *N. Pub.* [L. S.]

RECORDER'S OFFICE, *State of Ohio.*

On the 17th of March, 1817, this letter of attorney was received and recorded in my office, in book K, folios 59 and 60.

WILNER WINSHIP,
Rec'r Ross County.

And thereupon, this cause was further continued. And afterwards, to wit: at the September term of said court, in the year of our Lord one thousand eight hundred and twenty-three, came the said parties, by their counsel, and thereupon the said complainants filed in court here their replication, as follows, to wit:

SEVENTH CIRCUIT COURT U. S.—*Ohio District.*

Henry Clark and others,
vs.
Walter Dun and others.

The replication of the complainants to the answer of the defendant Walter Dun; these repliants saving and reserving to themselves now, and at all times hereafter, all and all manner of advantage and benefit of exception to the manifold insufficiencies, imperfections, and untruths, in the said answer contained, replication thereto say, that they will aver and prove their said bill to be true, certain, and sufficient, in the law to be answered unto, and that the said answer of the defendant is untrue, uncertain, and insufficient to be replied unto by these repliants, without that *that* any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct; and humbly pray, as in their said bill they have already prayed.

HENRY BRUSH, *Solicitor.*

Decree, pro-confesso, set aside, Replication filed and continued, with a leave to either party to take depositions on giving the adverse party legal notice of the time and place of taking the same. And thereupon, the respondents, James Collier and Josiah B. Smith, filed in court here the following answer, to wit:

The joint and several answer of James Collier and Josiah B. Smith, defendants, to the bill of complaint exhibited against these defendants and others, by Henry Clark, Jonathan Clark, and Mordecai McKinsey, complainants in the seventh circuit court of the United States for the district of Ohio, in chancery. These defendants saving and reserving, &c. for answer, &c. they answer and say, that they admit that defendant, Josiah B. Smith, is one of the children and heirs of Jacob Smith, deceased; and that defendant James Collier intermarried with Rachel, who was also one of the children and heirs of the said Jacob Smith, as stated and set forth in and by complainant's said bill of complaint.

Respondents further admit that the several individuals named and designated in said bill as being the children and heirs of the said Jacob Smith, deceased, are the children and heirs of the said Jacob, and his only children living, as therein stated and set forth. These respondents, in further answering, say they have very little personal knowledge respecting the contract between the said Nathaniel Massie and Jacob Smith, or any other matter contained in said bill of complaint. Defendant Smith knows a contract, between the parties aforesaid,

was made for the sale and exchange of land, but the precise times and stipulations of that contract he does not know. Defendants, however, have been informed, and they believe the same to be true, that such a contract as the complainants have stated and set forth in their bill, was made and concluded by and between the said Jacob Smith, deceased, and the said Nathaniel Massie, in manner and form as therein stated. These defendants are informed and believe that the said Jacob Smith, deceased, in his life time, sold and conveyed a part or all the land purchased by the said Jacob Smith of the said Nathaniel Massie to the said complainants, in the proportions, and in the manner set forth in and by the said complainants' bill of complaint; and these defendants deny all and all manner of fraud and combination wherewith they stand charged in and by the said bill of complaint, without that, that there is any other matter or thing material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed, or avoided, traversed or denied, is true. All which matters and things, these defendants are ready to verify and prove, as this honorable court shall direct and award; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JAMES COLLIER,
JOSIAH B. SMITH.
L. MASON, *Sol.*

STATE OF OHIO, *Clark County, ss.*

Personally appeared before me, the undersigned, a justice of the peace in and for the county aforesaid, James Collier and Josiah B. Smith, who, being sworn according to law, say, that the matters and things in their aforesaid answer contained, so far as stated from their own knowledge, are true; and, so far as stated to be information derived from others, they believe the same to be true; and further they say not.

JAMES COLLIER,
JOSIAH B. SMITH.

Sworn to and subscribed before me, this 21st day of August, in the year 1823.

JOSEPH PERRIN.

And thereupon, this cause was further continued. And afterwards, to wit: at the January term of said court, in the year of our Lord one thousand eight hundred and twenty-four, came into court here the said parties, by their counsel aforesaid, and thereupon the respondents, Seth Smith, Rachel Collier, Jacob Jmith, Ann Kyle, Sarah Snyder, Jacob Stanley, and Lydia Stanley, and Joel Dalby and wife, filed in court here their answers to the bill of complaint of the complainants, as follows, to wit:

The answer of Seth Smith, one of the defendants to the bill of complaints exhibited by Henry Clark and others in the seventh circuit court of the United States, in chancery, for the district of Ohio, against this defendant and others. This defendant, saving and reserving, and for answer, says and admits that he is one of the children, and heir, of Jacob Smith, deceased. This defendant, in further answering, says that that he has no personal knowledge of the matters and things stated and set forth in said bill, nor has he any certain information, which he can now recollect, concerning the same. He is willing that all the contracts fairly made and entered into by the said Jacob Smith, deceased, should be fully carried into effect, according to the intention thereof, without that, &c. and this defendant prays hereof to be dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

SETH SMITH.

THE STATE OF OHIO, *Green County, ss.*

Personally appeared before me, one of the justices of the peace in and for the county aforesaid, Seth Smith, who, being duly qualified as the law directs, deposeth and saith, that the matters and things contained in the foregoing answer by him, this defendant, so far as it is of his own knowledge, is true; and, so far as stated as information, he believes to be true; and further this defendant saith not. In testimony whereof, I have hereunto set my hand and seal, this 29th day of December, 1823.

GEORGE TOWNSLEY,
Justice of the Peace.

The answer of Rachel Collier, one of the defendants to the bill of complaint exhibited by Henry Clark and others in the seventh circuit court of the United States, in chancery, for the district of Ohio, against this defendant and others. This defendant, saving and reserving, &c. for answer say and admits, that she is one of the children and heirs of Jacob Smith, deceased, and that she has intermarried with one James Collier, as stated in and by them in their said bill of complaint. This defendant, in further answering, says she well recollects, when living in the county of Ross, at the falls of Paint creek, of a contract being made between her father, Jacob Smith, and Nathaniel Massie, in which the said Massie purchased the tract of land on which her father, Smith, then lived, and given in part pay thereof, land on the Little Miami, near Waynesville. She states that she does not recollect the particulars of the contract between them, but says, that, hearing her father in conversation about the contract, mentioned the name of Graham, but in what way she, at this time, does not recollect, excepting that she has heard and understood, and verily believes, that her father, Jacob Smith, and her mother, Patience Smith, directed the before mentioned tract of land, which Massie purchased of them, to Graham, in consideration of the contract between said Massie and her father; and that, in further answering, says that she recollects hearing her father say that he had sold the land which he got in part price of the tract at the falls of Paint creek, near Waynesville, to Henry Clark and others, but for what price she does not, at this time, recollect, but is willing that all the contracts fairly made and entered into by the said Jacob Smith, deceased, should be fully carried into effect, according to the true meaning and intention thereof, &c. And this defendant prays hereof to be dismissed with her reasonable costs and charges, in this behalf most wrongfully sustained.

RACHEL COLLIER.

THE STATE OF OHIO, *Green County.*

Personally appeared before me, one of the justices of the peace in and for the county aforesaid, said Rachel Collier, being duly qualified as the law directs, deposeth and saith, that the matters and things contained in the foregoing answer by her, this defendant, so far as it is of her own knowledge, is true; and, so far as stated as information, she belives to be true; and further this deponent saith not. Sworn to and subscribed before me, at Xenia, this 17th day of December, 1823.

GEORGE TOWNSLEY,
Justice of the Peace.

The answer of Ann Kyle, late Ann Smith, Sarah Snyder, late Sarah Smith, and Jacob Smith, defendants to the bill of complaint exhibited by Henry Clark and others, in the seventh circuit court of the United States, in chancery, for the district of Ohio, against these defendants and others. These defendants saving and reserving, and for answer says and admits, that they are children and heirs

of Jacob Smith, deceased. These defendants, in further answering, says that they do not know any thing concerning the contracts between their father, James Smith, and Massie; they know that Jacob Smith, deceased, in his life time got that tract of land near Waynesville from Massie, which Henry Clark and others purchased of said Smith, deceased; but they are willing that all the contracts fairly made and entered into by the said Jacob Smith, deceased, in his life time, should be carried into effect according to the true meaning and intention thereof, &c. These defendants prays thereof to be dismissed with their reasonable costs and charges, in this behalf most wrongfully placed.

JACOB SMITH,
ANN KYLE,
SARAH SNYDER.

STATE OF OHIO, *Green County, ss.*

Before me, the undersigned, an acting justice of the peace in and for the county aforesaid, personally came Ann Kyle, late Ann Smith, Sarah Snyder, late Sarah Smith, and Jacob Smith, who, being duly sworn according to law, deposes and says, that the above is their true answer, as stated above, and further says not. Given under my hand and seal, this 30th day of December, 1823.

JAS. A. SCOTT. [L. S.]
Justice of the Peace.

The joint and several answer of Jacob Stanley and Lydia his wife, and Rachel Collier, wife of James Collier, defendants to the bill of complaint exhibited by Henry Clark and others in the seventh circuit court of the United States, in chancery, for the district of Ohio, against these defendants and others. These defendants, saving and reserving, &c. for answer, they say and admit that the said Lydia and Rachel are the children and heiresses of Jacob Smith, deceased, and that the said Lydia has intermarried with the said Jacob Stanley, and the said Rachel with the said James Collier, as stated in and by said bill of complaint. These defendants, in further answering, say they have no personal knowledge of the matters and things stated and set forth in said bill, nor have they any certain information, which they can now recollect, concerning the same. They are willing that all the contracts fairly made and entered into by the said Jacob Smith, deceased, should be fully carried into effect, according to the intentions thereof, without that, &c. And these defendants prays hence to be dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

L. MASON, *Sol'r.*

STATE OF OHIO, *Logan County, ss.*

Personally appeared before me, the undersigned, a justice of the peace in and for the county of Logan aforesaid, Jacob Stanley and Lydia his *his* wife, who, being duly sworn according to law, deposeth and say, that the matters and things in the within answer contained, so far as the same are stated as of their own knowledge, are true; and, so far as stated to be information, they believe to be true; and further they say not.

JACOB STANLEY.
LYDIA STANLEY.

Sworn to and subscribed this 20th day of November, 1823, before me,
OLIVER OVERTON, *J. P.*

The joint and several answer of Joel Dalby and Elizabeth Dalby his wife, defendants in the bill of complaint exhibited by Henry Clark and others in the seventh circuit court of the United States, in chancery, for the district of Ohio, against these defendants and others. These defendants, saving and reserving to

themselves, &c. for answer, they say and admit that the said Elizabeth is one of the children and heirs of Jacob Smith, deceased, and that she has intermarried with Joel Dalby, as stated in their said bill of complaint. These defendants, in further answering, say they have but little knowledge, of their own, concerning the matters and things as stated by these complainants in their said bill, but say they were living near the falls of Paint creek at a time when Jacob Smith sold the place on which he then lived, together with his mills, to Nathaniel Massie; and that, as these defendants understood, he, said Smith, was to have from said Massie, land near Waynesville, on the Little Miami—they think about four hundred acres; and, as to other matters stated in said bill of complainants, these defendants, at this time, is entirely ignorant, but they are willing that all the contracts fairly made and entered into by the said Jacob Smith, dec'd, should be fully carried into effect according to the true intention thereof, without, &c. And these defendants pray hereof to be dismissed with their reasonable costs and charges, in this behalf most wrongfully sustained.

JOEL DALBEY.
ELIZABETH DALBEY.

THE STATE OF OHIO, *Green County.*

Personally appeared before me, one of the justices of the peace in and for the county of Green, and State aforesaid, Joel Dalbey and Elizabeth Dalbey, his wife, who, being duly sworn according to law, deposeth and say, that the matters and things in the within answer contained, so far as the same are stated as of their own knowledge, are true; and, so far as stated to be from information, they believe to be true; and further they say not.

JOEL DALBEY.
ELIZABETH DALBEY.

Sworn to and subscribed before me, at Xenia, this 10th day of Dec'r, A. D. 1823.

GEORGE TOWNSLEY,
Justice of the Peace.

And thereupon, this cause was regularly continued from term to term, until the July term of said court, in the year of our Lord one thousand eight hundred and twenty-six, at which time came again into court here the said parties, by their counsel, and leave is given the complainants to amend their bill, and it is ordered that James Galloway, of Green county, and Allen Trimble, of Highland county, be appointed commissioners to survey the lands in controversy, and ascertain the relative value thereof compared with the remaining moiety, a portion of the original tracts granted by patent to decedant Graham and Massie, and to the said George Gordon, who sold and conveyed his interest to Jesse Hunt, and said Hunt to said decedants Graham and Massie, and which said land was thereby held in common by said decedants Graham and Massie, and report the value of each portion, without taking into consideration the improvements made thereon by said complainants; and also to ascertain the value of the improvements made by said complainants upon said lands sold by said decedant Massie to Jacob Smith, deceased, and by said Smith to complainants, in portions, as stated in the bill, stating the improvements and the value made by each of the said complainants on their respective tracts or portions, and report the quantity and value of each tract or moiety to this court, at our next term; and, thereupon, the following agreement was filed, to wit:

In chancery in the circuit court of the United States, 7th circuit Ohio district, July term, 1826.

Henry Clark et alias,
vs.
Walter Dun and the heirs of Jacob Smith.

It is admitted that John Smith, whose deposition has been taken and placed on file in this cause by the complainants, is the son, and one of the heirs of Jacob Smith, named in complainants' bill, and that the said John Smith is a defendant in the above cause.

H. BRUSH, *for complainants.*
W. CREIGHTON, *jun. for Walter Dun, ex'r and devisee defendants.*

And thereupon, this cause was further continued. And, afterwards, to wit: on the ninth day of November, in the year of our Lord one thousand eight hundred and twenty-six, the complainants filed the following amended bill, to wit:

7TH CIRCUIT COURT U. S.—*Ohio District.*

Henry Clark and others, complainants,
vs.
Walter Dun, executor, &c.

The said complainants, by leave of the court here for that purpose first had and obtained, amend their bill by stating that the said tracts of land being owned by decedant Massie and decedant Graham, as tenants in common, the moiety not sold by decedant Massie to decedant Smith is still claimed and held by the defendant as such devisee, in trust for the uses and purposes of the said last will and testament of decedant, unless the same has been sold either by decedant Graham, in his life, or by defendant since his death, and is the full share of decedant Graham in said entire tracts held as aforesaid; and your orators are ignorant whether any, and, if any, what disposition has been made thereof, and therefore call upon the said defendant to set forth and state this matter more particularly, and, if the said moiety has been sold, the price and consideration re'd therefor, to whom sold, and at what time.

BRUSH & FITZGERALD,
Solicitors, &c.

And afterwards, to wit: on the *on the* sixth day of December, in the year of our Lord one thousand eight hundred and twenty-six, the complainants filed another amended bill, to wit:

7TH CIRCUIT COURT U. S.—*Ohio District.*

Henry Clark and others, complainants,
vs.
Walter Dun, executor, &c.

The said complainants, by leave of the court here for that purpose first had and obtained, amend their bill by stating that the said tracts of land being owned by decedant Massie and decedant Graham as tenants in common, the moiety not sold by decedant Massie to decedant Jacob Smith, is still claimed and held by defendant as such devisee, in trust for the uses and purposes of the said last will and testament of decedant Graham, unless the same has been sold either by decedant Graham in his life, or by defendant since his death, and is the full share

of decedant Graham in said entire tracts held as aforesaid; and your orators are ignorant whether any, and, if any, what disposition has been made thereof, and therefore call upon the said defendants to set forth and state this matter more particularly, and if said moiety has been sold, the price and consideration received therefor, to whom sold, and at what time.

BRUSH & FITZGERALD,
Solicitors for Complainants.

And, at the same time, the respondent filed his answer thereto as follows, to wit:

The answer of Walter Dun, executor of the last will and testament of John Graham, deceased, to the amended bill of complaint of Henry Clark and others, filed in the circuit court of the United States for the seventh circuit Ohio district, against him and others. The said defendant answering, saith, saving, &c. that his testator did not, in his life time, so far as he knows, sell or convey to any person his portion of the land in controversy, nor has it been sold to any person by this defendant since his death, but is still held and owned by this defendant as devisee, in trust, of the said John Graham, deceased. And this defendant prays, as he before prayed, to be hence dismissed with his costs, and without that, *that*, &c.

WALTER DUN, *Executor of, and devisee in trust, under the last will and testament of John Graham, dec'd.*

STATE OF OHIO, *Ross County, to wit:*

The above defendant, Walter Dun, came before me, a justice of the peace in and for said county, and made oath that the things stated in the above answer are true to the best of his knowledge and belief.

WALTER DUN.

Sworn and subscribed before me, this 25th day of November, 1826.

THOMAS OR, *J. P.* [L. S.]

And thereupon, the following order issued out of the clerk's office of said court, to wit:

CIRCUIT COURT OF THE UNITED STATES—*7th Circuit Ohio District, ss.*

Henry Clark et al. vs. *Walter Dun.* } *In Chancery.*

At the July term, in the year of our Lord one thousand eight hundred and twenty-six, "in this cause, leave is given the complainants to amend their bill, and it is ordered that James Galloway, of Green county, and Allen Trimble, of Highland county, be appointed commissioners to survey the lands in controversy, and ascertain the relative value thereof compared with the remaining moiety or portion of the original tracts granted by patent to decedants Graham and Massie, and the said George Gordon, who sold and conveyed his interest to Jesse Hunt, and said Hunt to the decedants Graham and Massie, and which said land was thereby held in common by said decedants Graham and Massie, and report the value of each portion, without taking into consideration the improvements made thereon by the said complainants, and also to ascertain the value of the improvements made by the said complainants upon said lands sold by said decedant Massie to Jacob Smith, deceased, and by said Smith to complainants, in portions, as stated in the bill, stating the improvements, and the value made by

each of the said complainants on their respective tracts or portions, and report the quantity and value of each tract or moiety to this court at our next term.

Attest: WM. KEY BOND, *Clerk*, [L. S.]

And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-six, came into court here the parties, by their counsel. By consent of parties, George W. Barren, of Highland county, is substituted as a commissioner in the room of Allen Trimble, named in the order entered herein at the last term; and, thereupon, said order, thus modified, is revived and continued for report and final decree at next term: and afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and twenty-seven, came the said parties, by their counsel. It is ordered that Samuel Kyle, of Green county, be, and he is hereby appointed, a commissioner in the stead of George W. Barren, for the purpose of executing the order made herein at the July term last, and that order is revived and continued; and afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-seven, this cause was further continued; and afterwards, to wit, on the twenty-eighth day of *of* December, in the year of our Lord one thousand eight hundred and twenty-seven, the commissioners heretofore appointed in this cause to survey, &c. made return of the same, with the following affidavit endorsed thereon, together with their proceedings, as follows, to wit:

STATE OF OHIO, *Green County.*

Personally appeared before me, the undersigned, a justice of the peace in and for the county and State aforesaid, Samuel Kyle and James Galloway, jr. and were duly sworn to discharge the duties required of them agreeably to the within order of the circuit court.

SAMUEL KYLE,
JAMES GALLOWAY, Jr.

Sworn and subscribed before me, this 3d day of December, 1827.

GEORGE TOWNSLEY,
Justice of the Peace.

Pursuant to the enclosed order from the United States circuit court, seventh circuit Ohio district, the undersigned, commissioners therein named, after being first duly sworn, proceeded to perform the duties thereby required of them, by surveying and determining the quantity and value of the lands therein mentioned, together with the improvements thereon, which lands are in controversy in a suit now pending in the said circuit court, wherein Henry Clark et al. are complainants, and Walter Dun defendant. The boundaries of the whole survey, and the sub-divisions thereof, were shown to us by said complainants.

[*For Plat—see original.*]

The above plat represents the whole of George Holland's survey, and the subdivisions of the part thereof claimed by the complainants. The whole survey contains 1303 44-100 acres. The upper moiety contains 615 74-100 acres, and the lower moiety contains 687 70-100 acres. We are of the opinion that the value of each moiety, as divided in the proportions above, is as nearly equal in value as can conveniently be made. The upper moiety of 615 74-100 acres, we value, without improvements, at five dollars per acre, amounting to three thousand and seventy-eight dollars and seventy cents; and the lower moiety, of 687 70-100 acres, we value, in like manner, without improvements, at four dollars and fifty cents per acre, amounting to three thousand and ninety-four dollars and sixty-five cents, making a difference in their value of only fifteen dollars and ninety-five cents, a sum too small to effect the division as made. Hen-

ry Clark's lot, containing 314 75-100 acres, we value, without the improvements, at four dollars sixty-eight and three-fourths cents per acre, amounting to fourteen hundred and ninety-five dollars and thirty-nine cents, and the improvements thereon at six hundred and fifty dollars. Jonathan Clark's lot, containing 320 32-100 acres, we value, in like manner, without the improvements thereon, at four dollars forty-three and three-fourth cents per acre, amounting to fourteen hundred and twenty-one dollars and thirty-two cents, and the improvements thereon at one hundred and sixty dollars. Mordecai McKinsey's lot, containing 52 63-100 acres, we value, in like manner, without taking the improvements thereon into consideration, to three dollars forty-three and three-fourth cents per acre, amounting to one hundred and eighty dollars ninety-one cents, and the improvements thereon at two hundred dollars. Which is respectfully submitted.

JAMES GALLOWAY, Jr.
SAMUEL KYLE.

December 7th, 1827.

And thereupon, this cause was regularly continued until the July term of said court, in the year of our Lord one thousand eight hundred and twenty-nine, at which time came into court here the said parties, by their counsel; and thereupon, the following exhibits and depositions were read as evidence, to wit:

RICHMOND, 21*st December*, 1797.

DEAR SIR: As soon after your arrival in the northwestern territory, as you find it convenient, I hereby authorize and desire you to dispose of the two tracts of land, on the Scioto, we purchased from Bertram Ewell—the one containing four hundred acres, the other five hundred acres, together with the five hundred acres adjoining, entered in my name; one-third of said three tracts of land being your property, the other two-thirds being mine, for which you will account to me. I also empower and desire you to dispose of the one thousand acre tract on Three Miles creek we purchased from William Rengolds, also the twelve hundred acre tract we purchased from Mayo Carrington, on Paint creek; we being equally concerned in these two tracts, you will account to me for half the proceeds. I also direct and empower you to dispose of as much of the lands surveyed, or entered in my name from warrants furnished by me, as will amount to eight thousand dollars for my share, being two-thirds, one-third of said lands being your property, by agreement, for locating, &c. It is entirely left with you to select the tracts you may think the most proper to dispose of, as circumstances and your knowledge of situations may induce you to judge most likely for our interest.

With regard, I am, dear sir,
Your humble servant,
JNO. GRAHAM.

RICHMOND, 10*th Ap'l*, 1799.

DEAR SIR: Since I wrote you, of the 10th of March, I have received a letter from Messrs. W. Maclare & Co. chiefly relating to expected patents. The following is a copy of that part wherein you are interested: Thomas Dix and Reuben Fields, no warrants presented in the survey. I have now transmitted authenticated copies of their warrants.

M. Clay and P. Slaughter not returned on the list of officers; certificates of their having served is now sent on.

P. Clayton, patent waiting Mr. Heron's order, which is sent on.

Leven Powel for 683 and 964 acres, patents waiting your order.

Ballard Smith 1000 acres, patents to me received.

Annexed, you have a copy of mine of 10th March, since which, I have heard nothing respecting the payment of money you have given me reason to expect.

Mr. Heron and I will happy to hear from you, and that money has got more plentiful than when you last wrote.

I am, dear sir, yours most sincerely,

JNO. GRAHAM.

Mr. H. joins me in thinking the sooner the better that the patents are got out of the office.

(Copy.)

RICHMOND, 10*th March*, 1799.

DEAR SIR: Your favor of the 7th of January is now before me. It gives me pain to see by it that the scarcity of money increases so as to reduce in value, and prevents the parting with landed property, particularly what lies some distance from the rivers or settlements, as such lands must be expected to rise in value more, in proportion, than land adjoining rivers and settlements. I join you in opinion that it will be for our advantage to part with those tracts that are mostly in demand, and let the out lands lie over. For this purpose, (I now empower you to dispose of any tract or tracts of land wherein you are interested with me, that appears, in your opinion, to come nearest to the value you may estimate.) If I concur in your opinion, you desire me to name the tract I had rather part with. The tract purchased from Major O'Bannon is the only one immediately on the river you and I are interested in, that you have not already got powers of disposing, but the above power includes every tract, and you will judge what is for the best. Mr. Heron, on perusing your letter, also agrees to approve of any sales you may think proper to make of lands not mentioned in the list we made out when you were here. Tench's lands were offered in a body at a high price, considering the quality you mention, and no deduction on account of a prior claim for part, I think, would be allowed. Shaw is in London. I was asked what I would give for the whole of his Kentucky lands. He is ignorant of part of his warrants not being located; no body here empowered to assign. In yours, you say you are, in a few days, to forward, by a neighbor, to Messrs. W. M. & Co. the amount of the two tracts of land you informed me the sales of in July, 13th. It is now two months since, and I have not heard any thing farther. I suppose you have directed Major Worthington where to pay in Philadelphia.

Yours, &c.

JNO. GRAHAM.

RICHMOND, *5th November*, 1801.

DEAR SIR: Your favor of 1st, came here last evening, but my being in Goochland prevented *and* an answer by return of mail. It was unlucky that Mr. Cox had left Alexandria before you got there, which, besides the disappointment, has given you much unavoiding trouble. The different enclosures in your letter are all received, viz. $600 in bank notes, to your credit, order on Doct. Evans for $162, do. on W. Duval $29 33, do. on W. Price $8; the proceeds of which shall be placed to your cr. as received. As it is long since Field's survey was lodged, it may be proper to be particular in inquiring after its situation, which I will thank you to have done. I am very glad you have, at last, got a patent for the land purchased from Mr. O'Bannon, and it is also pleasing to hear you have got the patents for Clayton's and Rix's. You are right in regard to survey No. 2843, I having made a memo. for 300 in place of 1300. I received the patent January, 1800. I know nothing of the situation of the land surveyed in the name of Wm. Reynold's, and, being near the time of closing the mail, I have not time this evening to inquire, but I suspect Mr. Means would not wish the patent to come out in the name of Rengolds. By to-morrow post, you may probably hear farther. Mr. James Taylor, exe'r of Mrs. Heron, is expected here on Saturday evening; if not then, he will certainly be here a day or two there-

after, to stay, I believe, all next week. Could you be here with the necessary papers, I can see no reason why a settlement may not take place at this time as well as at any future period, and I am satisfied that it would be highly pleasing to Mrs. Heron and Mrs. Taylor, as well as myself, that something decided could now be concluded on. In this wish, I hope you will yet find it in your power to visit us in Richmond, and it will be well to give us notice, and endeavor to be here by the last of next week, as I know Mrs. Taylor will be very anxious to return to Norfolk. If you cannot come here, and should have papers to leave behind you, too bulky to come by post, or on any other account, please to deliver them to captain John Davidson, who will do the necessary with them. I was in hopes the amount of money you would have been able to have accommodated me with, would have considerably exceeded what you mentioned; but I trust that you will let no tolerable opportunity escape of converting lands into money.

I am, with regard, my d'r sir,
Your sincere friend and serv't,
JNO. GRAHAM.

Your favor of the 2d, from Baltimore, is just received. I now enclose you the only letter awaiting you at this post office.

RICHMOND, 16*th October*, 1802.

DEAR SIR: My last to you was dated the 6th November, soon after which, I received your favor from Leesburgh of 12th, enclosing me one hundred and fifty dollars, and I have received eight dollars from William Price, both of which sums I have passed to your credit.

Doct. Evans, (as Mrs. Radford tells me,) says that part of the money was left in Kentucky, and that he will only pay the balance, without ever saying what that balance is; and William Duval says all his is paid in Kentucky. I observe a great deal of lands in your country belonging to non-residents are advertised for taxes, but, on talking with your brother, Mr. Henry, who I have had the pleasure of lately seeing here, I am myself satisfied you will timerously do the needful. But some persons have lately alarmed Mrs. Heron, and although I had told her that I am quite at rest on that subject, she insist that I write to remind you that all dependance is on you to satisfy the taxes, or any thing else that may be needful respecting the lands. But I am not so well satisfied about R. Field's survey of 500 acres on the Ohio; it is long since it was lodged in the public office. I formerly mentioned it to you, but you have omitted saying any thing about it. I have fears it may have been destroyed by the fire. It was assigned to Philip Slaughter, and by him to me. Your brother will be at Washington about this time. He has undertaken the trouble of making inquiry, and promised to write you, if it should be necessary, from thence. It was only very lately that here we learned that a law had passed last April limiting the times of delivering in claims for papers lost, which make it necessary not to lose time in knowing how the matter stands. It will give me much pleasure to hear from you.

I am, dear sir, your sincere friend and servant,
JNO. GRAHAM.

RICHMOND, 9*th March*, 1805.

DEAR SIR: I wrote you by Mr. Morrison, of 30th April last, since which I have not had the pleasure of hearing from you. In bargaining with Mr. Means for my lands in Ohio, I found myself greatly at a loss, both as to their value or what might be on hand or sold. On this account, our closing the bargain has been long delayed in expectation of hearing from you, with such particulars as would have enabled me to act with more knowledge, and consequently with more decision. I take his property here considerably above a cash valuation, but as property has generally been on the rise, I must hope a continuance, which

may compensate me. One point he has constantly stuck to, to which I yielded with reluctance, to wit, the receiving of $10,000 in money, as he says, to enable him (if he should ultimately resolve to fix in your country, which I believe at present is his plan,) to carry into effect certain improvements now contemplated by him. This money he has agreed to receive from you, or so much as may be due me from you; but in this, I have not been able to say what he may expect, and if more is wanted than is in your hands, it will fall hard on me to pay it here. On what lands are sold, the amount will be easily ascertained, but much assistance is yet necessary from you as to fixing the value of what remains on hand, as we have agreed that you should fix the value without applying to any other person. I have no doubt but you will do justice to the best of your knowledge, and I am satisfied that you need not apprehend reflections. The valuation is to be considered as a cash valuation, but not as a *sacrifice for cash.* As a more particular knowledge of what lands I have in your State, than I now possess, is necessary before I can deed them to Mr. Means, he has chosen to take from me, in the mean time, a general power of attorney, empowering him to pass a deed or deeds for any tract or tracts he may wish to dispose of. I have likewise given him an order on you for $10,000, which you will please to pay him; his receipt or receipts, in whole or in part, shall be good to you against me for any sum or sums of money you may pay him. If you have declined coming to this country, and you think that a settlement can be made between you and I, by Mr. Means, please say so; and if you shall think it necessary, I will transmit him a power of attorney for that purpose. At Mr. Means' desire, I have promised to request, particularly, the favor of your assistance to him in this business, not only getting possession, but also in making him acquainted with the situations, and any other particular you may judge of service to him in this business. A few weeks ago, Mr. James Taylor, ex'r of our late friend, was here: he wishes much that a settlement could take place with you, and division of the lands. He then seemed desirous of selling part of the lands belonging to the estate, both in Kentucky and Ohio, and talked with Mr. Means on the business. I have advised him, if he continues in that opinion, to send Mr. Means a power of attorney. This he has not done, and I am uncertain whether he now wishes to sell or not, but if he wishes still to sell, a power of attorney can follow Mr. Means, and should any be sold wherein you are interested, your advice and consent must be obtained, and it will be obliging in you to give your advice where not interested.

After writing the above, I received a letter from Mrs. Taylor, enclosing the two powers of attorney to Mr. Means; one to enable him to dispose of lands, the other, if you have no immediate prospect of coming to this country, in that case empowering Mr. Means to settle with you in Ohio. Do in this as you see right, but it is very desirous to have a division of the lands, and a settlement in the former division, in the lot that fell to Mrs. Heron. There are three tracts not at command, to wit, Stephen T. Mason's two tracts of 1000 acres each, and Elzy's 500 acres on Todd's Fork, besides the loss in entry for 475 acres on Little Miami of 286 acres, in the lot that fell to my share.

The following respects the tracts:

Clayton's, 966 2-3 acres on Miami. Patented to you, but no deed yet to me.

Entry for 600 adjoining Bowne's, and Indian creek: only a patent received for 100 acres; so there is 500 short to be made up.

Powell's No. 1532, 900, 1973, 1000, on Brush creek: no deed yet received, patented to you.

Field's 500 on Ohio; survey burnt. Mr. Means is informed of all I know of it.

It will give me great pleasure to hear that your health is completely re-established.

I am, my dear sir, yours most sincerely,

JNO. GRAHAM.

P. S. I now send you, by Mr. Means, some survey warrants, &c. found among Mr. Heron's papers, which must have been left by you.

Know all men by these presents, that I, John Graham, of the city of Richmond, and State of Virginia, have ordained, constituted, made, and in my place put, my friend Nathaniel Massie, of the State of Ohio, my true, full, and lawful attorney, and to the said Nathaniel Massie have given and granted my full power and authority to bargain, sell and convey, for me and in my name, all my estate, right, title, and interest, of, in, and to, all my lands and tenements situate in the State of Ohio, to any person or persons whatsoever, according to the laws of said State of Ohio, to have and to hold to the said person or persons whatsoever, their heirs and assigns, of any or either of them forever, to the only proper use and behoof of the said person or persons to whom the premises shall be so bargained, sold and conveyed, as aforesaid, their heirs and assigns forever, and the money arising from such sales to receive and pay to me. Giving and granting to my said attorney, my full power and authority in the premises, to do, execute, perform, and fulfil, all and singular thing and things whatsoever, which shall or may be expedient and necessary concerning the premises, as thoroughly and completely as if I myself were personally present at the doing and performing thereof, hereby ratifying and confirming, by these presents, whatsoever my said attorney shall do in and about the premises in my behalf, for me and in my name; provided always, and it is hereby expressly declared and understood, that the said Nathaniel Massie is not to grant any warranty for the said lands and tenements, except against myself, my heirs, and the re-payment of the purchase money without interest, in part or in the whole, as may be agreed on by the said Nathaniel Massie, for what part of the lands or tenements the purchaser may be evicted or defeated; and that all and every warranty or warrants, granted by the said Nathaniel Massie for the said lands and tenements, against any other person or persons, body or bodies, corporate and politic, state or states, than me, the said John Graham, my heirs, and the repayment of so much of the purchase money, without interest, as may be agreed on by the said Nathaniel Massie, for what part of the lands or tenements the purchaser may be evicted or defeated, shall be wholly void and of no effect, it being intended and distinctly understood that the estate, title, right, and interest of me, the said John Graham, only should be bargained, sold, and conveyed, and that neither myself, nor my heirs, should be liable to my purchaser or purchasers, or to the heirs, representatives, or assigns of any such purchaser or purchasers, in case the title to the said lands and tenements, or any or either of them, should be evicted or defeated by any other claim or claims whatsoever, except the repayment of what part of the purchase money, without interest, as may be agreed on by the said Nathaniel Massie. In witness whereof, I have hereunto affixed my hand and seal, in the city of Richmond, this twenty-third day of September, one thousand eight hundred and five years.

JNO. GRAHAM. [L. S.]

Signed and acknowledged in the presence of

RICH'D BLAIR, JOHN BUCHANAN.

VIRGINIA, *to wit:*

Before me, Archibald Blair, notary public for the city of Richmond, personally appeared John Graham, above named, and acknowledged the foregoing power of attorney to be his act and deed.

In testimony whereof, I have hereunto set my hand and seal of office, at Richmond, this 23d day of September, 1805.

A. BLAIR, *N. Pub.* [L. S.]

RICHMOND, 23*d February*, 1807.

DEAR SIR: I wrote you pretty fully of 28th September, 1805, since when, I have not had the pleasure of hearing from you. I then handed you my account against you, after having examined yours against me, that you sent me by Mr. Means. I should have been pleased to have had your approbation of my statements against you; since then, on again looking at your account on my books, I find I overlooked the balance of £30 2 2, as settled with you in Richmond on the 9th of December, 1799, which you will please add to the account, with interest 7 years and 8 months, making £13 16 11; also, your third of $20 paid by your brother to Reuben Fields, before he would assign his survey for the 500 acres on the Ohio. You had then also enclosed a statement of your account with the estate of Mr. Heron, as I made it after examining your account against the estate. It would also have been *been* agreeable that you had approved of it, or given your reasons why it should be altered. You had also then enclosed a power of attorney to enable you to transfer land. From your silence since, as well as General Findlay's, I conclude nothing has been done either in paying any part of the money due to me, or even of securing the payment in the manner I had reason to expect. This situation has forced me to prevail on Mr. Means to visit your country again, for the express purpose of completely settling all matters between us, as well as the estate of J. Heron. I must hope, after so long a time, you are prepared to discharge the greater part readily, but, whatever your situation may be, I have fully empowered and instructed Mr. Means to make a complete settlement with you, both for the estate of our late friend and myself. It has been with great reluctance that I have come to the resolution of engaging one solely for this purpose. But surely, after so much patience, to continue longer to wait here in silence, would be next to giving up any property I have in your country; besides, I should certainly be greatly blamed as regarding Mr. Heron's estate. Taking these into consideration, I trust you will not only excuse me, but I also hope you will make your best exertions to pay off both debts speedily; but, should it be out of your power to pay the whole immediately, Mr. Means is instructed to allow a reasonable time on your making the security complete. Besides asking your cordial co-operation in this business, I must also beg your assistance and advice to Mr. Means in disposing of lands or otherwise, as he may stand in need. My opinion still being against the probability of lands, with you, rising fast in value, as well as my being pinched in money matters, makes me desire Mr. Means to make all sales possible, and particularly where money is to be had, both for the estate and myself. In these, your advice and assistance may be of much service, and I hope you will aid by both. In hopes of soon hearing agreeable accounts from you,

With regard, I am, dear sir, your ob't serv't,

JNO. GRAHAM.

Know all men by these presents, that I, John Graham, of the city of Richmond, and State of Virginia, have ordained, constituted, made, and in my place put my friend Nathaniel Massie, of the State of Ohio, my true, full, and lawful attorney, and to the said Nathaniel Massie have given and granted my full power and authority to bargain, sell, and convey, for me and in my name, all my estate, right, title, and interest, of, in, and to, all my lands and tenements situate in the State of Ohio, to any person or persons whatsoever, according to the laws of said State of Ohio, to have and to hold to the said person or persons whatsoever, their heirs and assigns, of any, or either them, forever, to the only proper use and behoof of the said person or persons to whom the premises shall be so bargained, sold, and conveyed, as aforesaid, their heirs and assigns forever; and the money arising from such sales to receive and pay to me. Giving and granting to my said attorney, my full power and authority in the premises, to do, execute, perform, and fulfil all and singular thing and things whatsoever, which shall or may.

be expedient and necessary concerning the premises, as thoroughly and completely as if myself were personally present at the doing and performing thereof, hereby ratifying and confirming, by these presents, whatsoever my said attorney shall do in and about the premises in my behalf, for me and in my name; provided always, and it is hereby expressly declared and understood, that the said Nathaniel Massie is not to grant any warranty for the said land and tenements, except against myself, my heirs, and the repayment of the purchase money without interest, in part or in whole, as may be agreed on by the said Nathaniel Massie, for what part of the lands or tenements the purchaser may be evicted or defective, and that all and every warranty or warrantees granted by the said Nathaniel Massie for the said land and tenements, against any other person or persons, body or bodies, corporate and politic, state or states, than me, the said John Graham, my heirs, and the repayment of so much of the purchase money, without interest, as may be agreed by the said Nathaniel Massie, for what part of the lands or tenements the purchaser may be evicted or defective, shall be wholly void and of no effect, it being intended and distinctly understood, that the estate, title, right, and interest, of me, the said John Graham, only should be bargained, sold and conveyed, and that neither myself nor my heirs should be liable to any purchaser or purchasers, or to the heirs, representatives, or assigns, of any such purchaser or purchasers, in case the title to the said lands and tenements, or any or either of them, should be evicted or defective by any other claim or claims whatsoever, except the re-payment of what part of the purchase money, without intrest, as may be agreed on by the said Nathaniel Massie. In witness whereof, I have hereunto affixed my hand and seal, in the city of Richmond, this twenty-third day of September, one thousand eight hundred and five years.

JNO. GRAHAM. [L. S.]

Signed, sealed, and acknowledged, in the presence of
ARCH'D BLAIR, JOHN BUCKANAN.

VIRGINIA, *to wit:*

Before me, Archibald Blair, notary public for the city of Richmond, personally appeared John Graham, above named, and acknowedged the foregoing power of attorney to be his act and deed.

In testimony whereof, I have hereunto set my hand and seal of office, at Richmond, this 23d day of September, 1805.

A. BLAIR, *N. Pub.* [L. S.]

Received December 25th, 1805; recorded same day, in book H, folio 406.
Attest: WILLIAM WINSHIP,
Recorder Ross county.

Also, recorded 25th April, 1810, in book F, for sundries, pages 51 and 52.
JOHN W. BROWN,
Recorder Hamilton county.

Know all men by these presents, that I, John Graham, of the city of Richmond, and State of Virginia, have ordained, constituted, made, and in my place put, Robert Means, of the city of Richmond, my true, full, and lawful attorney, and to the said Robert Means have given and granted my full power and authority to bargain, sell and convey, for me and in my name, all my estate, right, title, and interest, of, in, and to, all my lands and tenements situate in the State of Ohio, to any person or persons whatsoever, according to the laws of the said State of Ohio, to have and to hold to the said person or persons whatsoever, their heirs and assigns, or the heirs or assigns, of any or either of them, forever, to the only proper use and behoof of the said person or persons to whom the premises shall be so bargained, sold, and conveyed, as aforesaid, their heirs and assigns forever; and the

money arising from such sales, to receive and pay to me, giving and granting to my said attorney my full power and authority in the premises, to execute, perform, and fulfil, all and singular thing and things whatsoever, which shall or may be expedient and necessary concerning the premises as thoroughly and completely as if I myself were personally present at the doing and performing thereof; hereby ratifying and confirming, by these presents, whatever my said attorney shall do in and about the premises in my behalf, for me and in my name. And I, John Graham, have revoked and annulled, and by these presents do revoke and annul, all powers of attorney heretofore granted for conveying land and tenements in the State of Ohio. In witness whereof, I have hereunto affixed my hand and seal, in the city of Richmond, this 23d day of February, one thousand eight hundred and seven years.

JNO. GRAHAM. [L. S.]

Signed, sealed, and acknowledged, in the presence of
ARCHIBALD BLAIR, BEVERLY BLAIR, JOHN TROWER.

VIRGINIA, *to wit:*

Be it known, that on this twenty-third day of February, eighteen hundred and seven, before me, Archibald Blair, notary public for the city of Richmond, came John Graham, named in the foregoing power of attorney, and acknowledged the same to be his act and deed.

In testimony whereof, I have hereunto set my hand and seal of office, at Richmond, this twenty-third day of February, 1807.

A. BLAIR, *N. Pub.*

I certify that the within power of attorney and acknowledgement, are true copies from the original in my possession. Given under my hand, this 5th day of July, 1822.

WALTER DUN, *Devisee, in trust under, and executor of, the last will and testament of John Graham, dec'd.*

Besides the within copies, on the back of the original power of attorney, the following endorsement is made, to wit: Recorder's office, State of Ohio, on the 17th day of March, 1807, this letter of attorney was received and recorded in my office, in book K, folios 59 and 60. William Winship, Recorder Ross county.

WALTER DUN.

This indenture, made this seventh day of June, in the year one thousand eight hundred and ten, between John Graham, of the city of Richmond, in the State of Virginia, by his attorney in fact, Nathaniel Massie, and the said Nathaniel Massie and Susan, his wife, of the county of Ross, and State of Ohio, of the one part, and Jacob Smith, of the county of Green, and State last aforesaid, of the other part, witnesseth, that the said John Graham, Nathaniel Massie and Susan, his wife, for, and in consideration of; the sum of two thousand one hundred and thirty dollars, current money of the United States to them in hand paid, the receipt whereof they do hereby acknowledge, and forever acquit and discharge the said Jacob Smith, his heirs, executors, and administrators, have granted, bargained, sold, aliened, and confirmed, and by these presents do grant, bargain, sell, alien, and confirm, unto the said Jacob Smith, his heirs and assigns, forever, all that tract or parcel of land lying and being in the county of Warren, and State last aforesaid, beginning at a hackberry and honey locust, the upper corner on the Miami river, to Clement Reed's survey No. 339, and running thence, up said river, with the meanders thereof, to a sycamore and two box elders, a corner made by consent, in dividing the original tract, by David Pugh; thence, south, thirty-nine degrees east, with the division line made by the said

David Pugh, four hundred and eighty-three poles to two sugar trees on the patent line, south fifty-one degrees, west two hundred and thirty-nine poles six-tenths, to an elm beach and sugar tree, the upper back corner of Clement Read's survey; thence, with his line, north thirty-nine degrees, west four hundred sixty-one five-tenths poles, to the beginning, containing six hundred and fifty-six acres, more or less, together with all improvements, water courses, profits, and appurtenances, whatsoever, to the said premises belonging, or in any wise appertaining; to have and to hold the lands hereby conveyed, with all and singular the premises, with every part and parcel thereof, with every of the appurtenances, unto the said Jacob Smith, his heirs and assigns, forever, to his and their only proper use and behoof, and for no other intent or purpose whatsoever; and the said John Graham, by Nathaniel Massie, his attorney, in fact, as aforesaid, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said Jacob Smith, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said Jacob Smith, his heirs and assigns, against him, the said John Graham, and his heirs, and all and every person claiming from, by, or under him or them, doth and will warrant, and forever defend, by these presents. And the said Nathaniel Massie and Susan his wife, and their heirs, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said Jacob Smith, his heirs and assigns, against him, the said Nathaniel Massie, and Susan his wife, and their heirs, and all and every other person or persons whatsoever, doth and will warrant and forever defend, by these presents. In witness whereof, the said John Graham, by Nathaniel Massie, his attorney in fact, as aforesaid, and the said Nathaniel Massie and Susan his wife, have hereunto set their hands and seals, the day and year first before written.

JNO. GRAHAM, [L. S.]
By NATH'L MASSIE, *his att'y in fact.*
NATH'L MASSIE, [L. S.]
SUSAN MASSIE, [L. S.]

Signed, sealed, and delivered, in presence of
JOSEPH TIFFIN.

STATE OF OHIO, *Ross County, ss.*

On the day and year first within written, came before me, a justice of the peace for the county aforesaid, the within named John Graham, by Nathaniel Massie, his attorney in fact, and the said Nathaniel Massie, and acknowledged the above signing and sealing to be their act and deed; and, at the same time and place, came the before mentioned Susan Massie, and being by privately examined apart from, and out of the hearing of, her said husband, also acknowledged the above signing and sealing to be her voluntary act and deed, and that she relinquished her right of dower to the foregoing land of her own accord, and without fear or threats from her said husband. Given under my hand and seal, this seventh day of June, 1810.

JOSEPH TIFFIN. [L. S.]

Received for record the 8th September, 1810; recorded the eleventh day of the same month, in book C, pages 191 and 192. Examined.

ENOS WILLIAMS, *R. W. C.*

UNITED STATES' CIRCUIT COURT—*7th circuit for the district of Ohio.*

Henry Clark et al. complainants,
vs.
Walter Dun et al. defendants.
} *In Chancery.*

To the said defendants, or Messrs. Creighton and Bond, their attorneys of re-

cord: please to take notice, that, on Wednesday, the nineteenth day of this present month, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of said day, at the clerk's office in the town of Xenia, in the county of Green, in this State, before some competent authority, we shall proceed to take the depositions of Patience Smith, John Smith, and others; which depositions, when properly taken, we shall offer to be read in evidence on the hearing of said cause. You have liberty to attend.

Yours, with respect,
BRUSH & FITZGERALD,
Att'y for complainants.

CHILLICOTHE, OHIO, *November 17th.*

Served, by copy, November 17th, 1823.

UNITED STATES' CIRCUIT COURT—*Seventh Circuit for the District of Ohio.*

Henry Clark et al. complainants,
vs.
Walter Dun et al. defendants.
} *In Chancery.*

The deposition of John Smith, taken before Joseph Hamill, a justice of the peace within and for Green county, at the clerk's office, in the town of Xenia, in the county of Green, on the nineteenth day of November, 1823, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of said day, (pursuant to a notice herewith enclosed, to be read in evidence in the above cause, the said John Smith being first duly affirmed according to law, deposeth and saith: in the latter part of the winter or spring of eighteen hundred and three, to the best of this deponent's recollection and belief, Jacob Smith, (now deceased,) sold Nathaniel Massie a large tract of land at the falls of Paint creek, in Ross county, Ohio; on which said tract of land, there was a grist mill, saw mill, and hemp mill; one hundred acres of said land, or thereabouts, was rated, agreeably to the best of this deponent's recollection, at about six thousand dollars, which sums was to be paid in money, or lands that the said Smith would agree to accept of as money; the residue of said tract of land was given to said Massie in exchange for other lands; part of which lands received by Josiah Smith (now deceased,) is the lands now in controversy on the Little Miami, near Waynesville, Warren county, Ohio. This deponent further saith, that, shortly after the contract between the said Josiah Smith, deceased, and Nathaniel Massie, with respect to the tract of land sold by said Smith to Massie at the falls of Paint creek, as aforesaid, this deponent travelled with the said Josiah Smith (now deceased,) to view several tracts of land which the said Massie had given him a description of, and, while viewing the tract now in controversy, this deponent advised the said Jacob not to have any thing to do with said land, this deponent being in full recollection, at that time, that the said Massie had informed the said Jacob Smith, in the presence of this deponent, that he, the said Massie, did not hold said land in fee simple, but that he had a power of attorney, or agency, from Graham to sell said lands. This deponent did not, at that time, consider the title of land made by an agent as safe, if the fee simple had been vested in him; the said Jacob then informed this deponent that there was no difference as to the safety of the title, and he would therefore accept of the lands. This deponent further saith, that he has since understood that the said tract of land was afterwards conveyed by Graham to said Smith, but as for the certainty of it, he does not know. This deponent further saith, that he has been informed, and believes, that the said tract of land at the falls of Paint creek, was conveyed to said Graham by said Jacob Smith (now deceased,) and Patience Smith his wife, in con-

pensation for the tract of land now in controversy and other lands sold by said Massie as agent for said Graham, and that the said Jacob Smith (now deceased,) having, in his life time, informed this deponent that an understanding had taken place between the said Graham, Massie, and Smith, previous to the conveyance of the lands, by the said Smith and his wife, at the falls of Paint creek, and the conveyance of the said lands, now in controversy, by Graham to said Smith. And further this deponent saith not.

JNO. SMITH.

The foregoing deposition was sworn to and subscribed before me, in the clerk's office in the town aforesaid, in the county of Green, the nineteenth day of November, 1823, between the hours of ten o'clock in the forenoon and five o'clock in the afternoon of said day, to be read in evidence in the cause set forth in the caption.

JOSEPH HAMILL,
Justice of the Peace.

And thereupon, this cause came on to be heard on the bills, answers, and exhibits, and was argued by counsel; and the court not being advised what decree to pronounce in the premises, the said cause is continued until the next term; and afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and twenty-nine, came again into court here the said parties, by their counsel; and thereupon the said complainants, by their counsel, filed in court here the following affidavit and statement, to wit:

SEVENTH CIRCUIT COURT U. S.—*Ohio District.*

Henry Clark and others,
vs.
Walter Dun, ex'r, &c.

Cornelius Clark made oath, in open court, that he is the son of one of the complainants, by whom he has been expected to give his attention to this cause on his behalf, and he has done so, and, by considerable industry used by him since the last term of this court, he has, a few weeks prior to the session of the court, discovered that a person by the name of Wilson, whose christian name he does not recollect, is a material witness for complainants, as he believes that said witness (whose name he believes to be James,) will prove that defendant Dun informed him that he had received a letter from Graham, his testator, in which said Graham stated that he would not disturb any of the conveyances or contracts made by Massie to his, Graham's, lands in Ohio; that he would not give general warranty deeds to such as he had sold, but he would give quit claim deeds to all such lands; that, immediately on making the discovery of said testimony, he took steps to take the deposition of said witness and others, whose testimony he found out to be material in the cause, as he supposed, at the same time, but was disappointed in being able to obtain the deposition of the said Wilson, by reason of his, said Wilson's, absence out of the State, having, as deponent is informed and believes, gone to Baltimore some short time prior thereto. This deponent has no doubt that said testimony can be obtained before the next term of this cause, if this cause can be continued for that purpose, for which, application is accordingly made, and not merely for delay. Deponent is convinced neither of complainants had any knowledge of the materiality or existence of said testimony until discovered by him as aforesaid.

CORNELIUS CLARK.

Sworn to and subscribed, in open court, January 1st, 1830.

WILLIAM MINER, *Clk.*

H. Brush, solicitor for complainants above, states, professionally, to the court.

that he had no knowledge of the existence of the testimony above referred to until a few weeks before this term of the court, when informed thereof by the above named deponent, Mr. Clark, and then immediately took steps to take the same, which has, in fact, failed as above stated by said deponent; that he considers the evidence material for complainants, and that they cannot safely have the cause heard without said testimony. Respectfully submitted.

H. BRUSH.

And, on motion, leave is granted to take depositions in this cause, on notice being given to the adverse party according to the rules of this court; and thereupon this cause is further continued. And now, at this day, to wit, the second Monday of July, being the 12th day of the same month, in the year of our Lord one thousand eight hundred and thirty, being the time, and at the place first herein aforesaid mentioned, came the parties, by their counsel aforesaid, and the cause coming on to be heard, the following depositions were read as evidence, to wit:

SEVENTH CIRCUIT COURT U. S.—*Ohio District.*

Henry Clark and others,
vs.
Walter Dun.

The defendant, or his solicitors, will take notice that the complainants will take the deposition of Isaac Stewart, Joseph Taylor, Christian Plathers, at the tavern house of said Christian Plathers, near the town of Bainbridge, in Ross county, Ohio, on Monday, the fourteenth day of this present month of December, 1829, between the hours of eight o'clock in the morning and six o'clock in the evening of said day, and to continue from day to day until completed, to be taken before proper and competent authority for that purpose, and to be used in evidence on the trial of the above cause.

H. BRUSH, *Solicitor for Complainants.*

December 4th, 1829.

CREIGHTON and BOND, Esquires,
Solicitors for defendants.

Service acknowled. this 4th December, 1829; but this acknowledgment is not to be held as implying any agreement, on our part, to the taking of testimony.

CREIGHTON & BOND,
Sol's for W. Dun.

State of Ohio, Ross County.

IN CHANCERY IN SEVENTH CIRCUIT UNITED STATES' COURT—*Ohio District.*

Henry Clark and others,
vs.
Walter Dun and others.

The deposition of John Wilson, taken before me, Mathew Gillpillan, an acting justice of the peace for Paxton township, in said county, pursuant to the enclosed notice, at the town house of Samuel Turners, in Bainbridge, who, after being duly cautioned and sworn according to law, deposeth and saith: that, some time previous to the death of John Graham, of Richmond, Virginia, having purchased land of Nathaniel Massie, attorney in fact for said Graham, and the death of said Massie, feeling anxious to know whether his business had been legally transacted, I was *was* induced to inquire of Walter Dun, acting agent for Graham, and found my title to be illegal. I requested Mr. Dun to write to Mr. Graham,

to get him to legalize my title. He did, and told me he had got an answer, and said I might rested contented; that Mr. Graham had wrote to him that he expected the people that purchased his lands of Massie was in peaceable possession, and he wished them to remain so, for he had no claim or demand against them, but he would not increase his liability for any of Massie's misconduct; and Mr. Dun and myself of what was meant by Massie's misconduct, and supposed it was his making general warranty deeds, whereas he had only allowed deeds so as if the land was lost he should only refund the money with interest, and referred me to Mr. Graham's letter-book, which contained copies of letters wrote to Mr. Massie, which stated the deeds were to be made in that way. I also saw a letter in said book which reads as follows, (to Massie:) I here enclose you a power of attorney, which will enable you to convey all my lands in the State of Ohio you have already sold; which letter was about the same date of the power of attorney existing from said Graham to Massie. Interrogatory by complainant: In the first letter you speak of, you understood that Graham did not wish to disturb any sales made by Massie of his (Graham's) lands in Ohio? Answer: I understood it so from what Dun told me, and that letter contained, I supposed Graham intended to sanction all Massie's sales. Question: What did you understand by such expression? Answer: I understood that Graham was unwilling to make general warranty deeds, but was willing to make quit claim deeds for all lands sold by Massie of his (Graham's) lands in the State of Ohio. Question: Can you fix a date at the —— you saw those letters referred in the above deposition? Answer: No certain year, but, as before, states some time previous to the death of Mr. Graham. Question: Had you not a suit with Mr. Dun relative to your land, and he (Dun) refused to give up those letters as evidence? Answer: I only applied for the first letter mentioned, and Dun in the first place refused, and denied that he had no such a letter in possession, but afterwards acknowledged it, and agreed at last to bring into court as evidence in my favor if I needed it; but it was not called for, because, although I did not stand in need of it; and further deponent saith not.

JNO. WILSON.

I certify that the above deposition was taken agreeably to the stipulations contained in the above caption, in my own hand-writing, except the deponent's name, on the 12th day of May, A. D. 1830, between the hours of nine o'clock in the morning and six o'clock in the evening of said day. Given under my hand and seal this 12th day of May, A. D. 1830.

M. GILLPILLAN, *J. P.* [L. S.]

Open 29th May, 1830; no exception to be taken because of the same not being opened in court, nor by reason of notice not being entered.

CREIGHTON & BOND.

All other exceptions are expressly ~~recorded~~ reserved.

CREIGHTON & BOND,
Sol'rs for defendants.

State of Ohio, Ross county, ss.

IN CHANCERY IN THE UNITED STATES' CIRCUIT COURT—*Seventh Circuit Ohio District.*

Henry Clark and others,
vs.
Walter Dun and others.

The deposition of Isaac Stewart, taken before me, Mathew Gillpillan, an acting justice of the peace of said county, at the tavern-house of Christian

Platter, in township Paxton, and county aforesaid, in conformity with the enclosed notice, who, after being duly cautioned and sworn according to law, deposeth and saith that he is acquainted with Gen'l Nathaniel Massie and Jacob Smith in their life time; and that he was present and known to a tract of land between the aforesaid Massie and Smith, and that Massie had purchased a tract of land of Smith of ninety acres of bottom land at the falls of Paint creek, on the north side of said creek, and including all the unsold lots in Amsterdam, with the mills and other improvements, for eighteen hundred pounds, and for the remainder of said tract, belonging to said Smith, Massie agreed to give lands in exchange (Smith's) choice of two tracts of land on the Little Miami, and a tract of land on Walnut creek; and a short time afterwards, not exceeding one month, he heard the said Smith state that he had made choice of a tract of land on the Little Miami, or between the Little Miami and Cæsar's creek.

Question by complainant: At what time was the above trade of lands entered into by the above mentioned Massie and Smith? Answer: In June or July, 1803. Question by the same: Did you work for the parties at the time of the contract? Answer: I was working for Massie at the time of the contract, and have worked for both parties before and after said contract. Question by complainant: Was you present on the day the said contract was made? Answer: I was. Question by the same: Was not Smith to receive in part payment of the eighteen hundred pounds in lands on the Little Miami? Answer: I do not recollect, but am confident, as before stated, that Smith was to have his choice of two tracts of land on the Little Miami, or between the Little Miami and Cæsar's creek, in part of the consideration of lands sold on the north side of Paint creek, at the great falls of said creek; and, about a month afterwards, heard Smith state that he had made his choice of said lands. Question by the same: Do you believe that that part of the bill that relates to the contracts are true? Answer: I do; and further deponent saith not.

ISAAC STEWART.

I hereby certify that the above deposition was taken agreeable to the stipulation of the within caption, and in conformity with the enclosed notice, before Mathew Gillfillan, an acting justice of the peace for said county, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, at the tavern-house of Christian Platters, in the township of Paxton, county and State aforesaid, to be read in evidence in the United circuit court seventh circuit and district of Ohio, in a suit there pending, wherein Henry Clark and others are complainants, and Walter Dun and others are respondents, and taken in my own hand-writing, except the signature of the deponent. Given under my *my* hand and seal this 14th day of December, A. D. 1829.

M. GILLFILLAN, *J. P.* [L. S.]

State of Ohio, Ross county.

IN CHANCERY IN THE UNITED STATES' SEVENTH CIRCUIT COURT—*Ohio District.*

The deposition of Joseph Rockhold, taken at the tavern-house of Christian Platter, in the county and State aforesaid, in conformity with the enclosed notice, who, after being first duly cautioned and sworn according to law, before me, the subscriber, an acting justice of the peace in and for said county, deposeth and saith that he was acquainted with Gen'l Nathaniel Massie and Jacob Smith in their life time, and was particularly acquainted with and exchange of lands between the said Massie and Smith some time in the year A. D. 1803; and that Massie gave, in part payment for Smith's possession on the north side of Paint creek, at the great falls of said creek, lands on the Little Miami and Walnut creek; and, some time afterwards, the (deponent) heard Smith boasting

of the quality of his Miami lands that he got of Massie. Question by complainants: Do you believe that part of the bill which relates to the contract is true? Answer: I do; and further deponent saith not.

JOS. ROCKHOLD.

I certify that the above deposition was taken agreeable to the stipulations contained in the above caption, and in conformity with the enclosed notice, before me, Mathew Gillfillan, an acting justice of the peace for said county, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, at the tavern-house of Christian Platter, in the township of Paxton, county and State aforesaid, to be read in evidence in the United States' circuit court in a suit there pending, wherein Henry Clark and others are complainants and Walter Dun and others are respondents, and taken in my own hand-writing, except a part of the caption and deponent's signature. Given under my hand and seal this 14th day of December, A. D. 1829.

M. GILLFILLAN, *J. P.* [L. S.]

State of Ohio, Ross county, ss.

IN CHANCERY IN THE UNITED STATES' CIRCUIT COURT—*Seventh Circuit Ohio District.*

Henry Clark and others,
vs.
Walter Dun and others.

The deposition of William Kent, taken before me, Mathew Gillfillan, an acting justice of the peace in and for said county, at the tavern-house of said Christian Platter, in Paxton township, in said county, in conformity with the enclosed notice, who, being duly cautioned and sworn according to law, deposeth and saith: Question by complainant: Was you acquainted with Gen'l Nathaniel Massie and Jacob Smith? Answer: I was intimately acquainted with both. Question by same: Do you know any thing relative to a trade or exchange of lands that Smith owned at the great falls of Paint creek, on the north side of of said creek? Answer: A conversation with Gen'l Massie some time after the contract, and Massie stated that he purchased Jacob Smith's possession at the great falls of Paint creek, on the north side of said creek, and was to give him (Smith) lands on the Little Miami in part payment, and the balance in money, and Smith made a similar statement relative to the contract. Question by the same: Do you believe, from your intimacy with, an information from the said Massie and Smith, that that part of the bill relative to the contract is true? Answer: I do; and further deponent saith not.

WILLIAM KENT.

I certify that the above deposition was taken agreeable to the stipulations contained in the above caption, and in conformity with the enclosed notice, before me, Mathew Gillfillan, an acting justice of the peace for said county, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, at the tavern-house of Christian Platter, in the township of Paxton, county and State aforesaid, to be read in evidence in the United States' circuit court seventh circuit and district of Ohio, in a suit there pending, wherein Henry Clark and others are complainants, and Walter Dun and others are respondents, and taken in my own hand-writing, except the signature of the deponent. Given under my hand and seal this 14th day of December, A. D. 1829.

M. GILLFILLAN, *J. P.* [L. S.]

State of Ohio, Ross county, ss.

IN CHANCERY IN THE UNITED STATES' CIRCUIT—*Seventh Circuit Ohio District.*

Henry Clark and others,
vs.
Walter Dun and others.

The deposition of Joseph Taylor, taken before Mathew Gillfillan, an acting justice of the peace in and for said county, at the tavern-house of Christian Platter, in the township of Paxton, in said county, in conformity with the enclosed notice, who, after being duly cautioned and sworn according to law, deposeth and saith that he was intimately acquainted Gen'l Nathaniel Massie and Jacob Smith in their life time, and was informed by the aforesaid Massie and Smith that they had exchanged lands; that Massie gave Smith lands on the waters of the Little Miami, and a balance in cash, for Smith's possession at great falls of Paint creek, on the north side of said creek. The above conversation relative to the said contract was had with the parties after the contract was consumated. Question by complainant: From your intimacy with the parties, do you believe that part of the bill setting forth the contract to be true? Answer: I am confident, as before stated, that Smith was to have lands on the Little Miami, and the balance in cash; and further deponent saith not.

JOSEPH TAYLOR.

I certify that the above deposition was taken agreeable to the stipulation in the above caption, and in conformity with the enclosed notice, before me, Mathew Gillfillan, an acting justice of the peace for said county, on the fourteenth day of December, in the year of our Lord one thousand eight hundred and twenty-nine, at the tavern-house of Christian Platter, in the township of Paxton, county and State aforesaid, to be read in evidence in the United States' circuit court seventh circuit and district of Ohio, in a suit there pending, wherein Henry Clark and others are complainants, and Walter Dun and others are respondents, and taken in my own hand-writing, except the signature of the deponent. Given under my hand and seal this 14th day of December, A. D. 1829.

M. GILLFILLAN, *J. P.* [L. S.]

SEVENTH CIRCUIT COURT U. S.—*Ohio District.*

Henry Clark and others,
vs.
Walter Dun.

The above named defendant and his solicitors, Creighton and Bond, esquires, will take notice that the complainants will take the deposition of Joseph Taylor, James Irvin, and others, witnesses on their behalf in the above cause, before proper and competent authority for that purpose, at the tavern-house of Samuel Turner, inn-keeper, in Bainbridge, Ross county, Ohio, on Wednesday the twelfth day of May next, (May 12th, 1830,) between the hours of nine o'clock in the morning and six o'clock in the evening of said day, to be used and employed as evidence at the hearing of the above cause. Yours, &c.

H. BRUSH, *Solicitor for complainants.*

April 28th, 1830.
CREIGHTON & BOND, Esqrs.
Solicitors for defendants.

The above notice was served on us at Chillicothe, April 28th 1830.

CREIGHTON & BOND.

State of Ohio, Ross County, ss.

IN CHANCERY IN THE SEVENTH CIRCUIT UNITED STATES' COURT——*Ohio District of Ohio.*

Henry Clark and others,
vs.
Walter Dun and others.

The deposition of Joseph Taylor, taken before Mathew Gillfillan, an acting justice of the peace for said county, at the tavern-house of Samuel Turner, in Bainbridge, pursuant to the enclosed notice, between the hours of 9 o'clock A. M. and 6 o'clock, P. M. on the 12th day of May, inst. who, after being duly cautioned and sworn according to law, deposeth and saith that he (deponent) passing along near the falls of Paint creek, and saw Gen'l Massie and his hands *running* was running out the lands about the falls, and he (Massie) stated to him in presence of Graham, that he was running out the land for the purpose of giving a mortgage of it to Graham to secure the payment of moneys that he was indebted to him for lands he (Massie) had sold of Graham, and had failed to pay; and said transaction occurred, as deponent verily believes, some time in 1807 or 1808. Question by complainant: Did you unde stand that a settlement took place between Massie and Graham? Answer: I inferred from the conversation that there was a settlement, and the mortgage was given to *to* secure the *the* payment balance. Question: Has not the lands about the falls of Paint creek been sold under the mortgage aforesaid? Answer: I was not at the sales, but understood that it was sold under the mortgage aforesaid.

JOSEPH TAYLOR.

I certify that the above deposition was taken agreeable to the above stipulation, contained in the above caption, in my hand-writing, except the deponent's name, on the 12th day of May, inst. between the hours of 9 o'clock A. M. and 6 o'clock P. M. on said day. Given under my hand and seal this 12th day of May, A. D. 1830.

M. GILLFILLAN, *J. P.* [L. S.]

No exception to be taken by reason of the defendant being now opened.
CREIGHTON & BOND, *for def'ts.*

And thereupon the following decree was ordered to be entered in this cause, to wit:

Clark and others,
vs.
Dun and others. } *In Chancery.*

This day this cause came on to a final hearing upon the bill, answers, replication, and evidence; the arguments of counsel being heard, and the court having fully considered the matters aforesaid, are of opinion that the law and the equity of the case are with the complainants, and that the defendant Dun ought to convey to them the lands and premises in the bill mentioned, in portions, to said complainants, as in the said bill the same are claimed by them; and that the injunction before granted be made perpetual. It is therefore adjudged, ordered, and decreed, by the court, that the said defendant Dun, within six months from this date, make, execute, and deliver to said complainants, respectively, indentures or deeds of conveyance, by which he shall grant and convey to them, the said complainants, respectively, their heirs and assigns forever, the said lands and premises in said bill mentioned, in portions, as follows, to wit: to the said Jonathan Clark, his heirs and assigns forever, three hundred and six acres and

twenty-fiveh-undredths of an acre, by metes and bounds, as described in the indenture, or deed, made by decedant Jacob Smith and wife to said Jonathan Clark, bearing date August 11th, 1810, referred to in said bill; to said complainant Henry Clark, two hundred and ninety-nine acres and twenty-five-hundredths of an acre, by metes and bounds, as described in the indenture, or deed, from said decedant Jacob Smith and wife to said Henry Clark, bearing date said 11th August, 1810, also referred to in said bill; and to said Mordecai McKinsey fifty acres, by metes and bounds, as described in the indenture, or deed, from the said decedant Jacob Smith and wife to said Mordecai McKinsey, bearing date August 10th, 1812, likewise referred to in said bill; and in case of default, by said defendant Dun, in making and delivering such indenture or deeds within the time aforesaid, then this decree shall operate as such conveyance, indentures, or deeds, according to the act of assembly of Ohio in such case made and provided, and vest in said complainants, respectively, the lands aforesaid, in portions, as aforesaid. And it is further ordered, adjudged, and decreed, that the injunction aforesaid granted, of the judgment at law in ejectment be perpetually enjoined; and that said defendant Dun pay all the costs at law, occasioned by said action of ejectment and proceedings thereon, and also the costs herein expended, and the parties hence dismissed, &c. and it is adjudged, ordered, and decreed accordingly by the court. And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and thirty.

Henry Clark and others, complainants,
vs.
Walter Dun and others, respondents.
} *In Chancery.*

Decree, July term, 1830, on motion of defendant Dun, by Mr. Bond, his counsel, an appeal is allowed from the decree entered in this cause at the last term of this court, to the Supreme Court of the United States, according to act of Congress in such case made and provided, on condition that a bond be given, with Robert Dun as security, to perfect said appeal, in the penalty of five hundred dollars, and filed with the clerk of this court within sixty days. And afterwards, to wit, on the eighth day of February, in the year of our Lord one thousand eight hundred and thirty-one, the defendant Dun filed in the office of the clerk of said court the following bond to perfect said appeal, to wit:

Know all men by these presents, that I, Robert Dun, of Ross county, Ohio, am held and firmly bound unto Henry Clark, Jonathan Clark, and Mordecai McKinsey, of said State, in the sum of five hundred dollars; for the payment whereof, I bind myself, my heirs, firmly by these presents; sealed with my seal, and dated the 5th day of February, A. D. 1831. Whereas, at a circuit court of the United States for the district of Ohio, begun and held at Columbus, on Monday the 12th day of July, A. D. 1830, upon the hearing and consideration of a certain suit in chancery pending in said court, wherein Henry Clark, Jonathan Clark, and Mordecai McKinsey were complainants, and Walter Dun, Joel Dalby and Elizabeth his wife, late Elizabeth Smith, James Collier and Rachel his wife, late Rachel Smith, John Smith, Samuel Kyle and Nancy his wife, late Nancy Smith, Josiah B. Smith, Henry Snyder and Sarah his wife, late Sarah Smith, Jacob Stanley and Lydia his wife, late Lydia Smith, Jacob Smith, Seth Smith, Edward Flood and Hannah his wife, late Hannah Smith, were defendants. It was, by the said court, among other things, ordered and decreed that the injunction before granted be made perpetual, and that the said defendant Dun pay all the cost at law occasioned by said action of ejectment, and also the costs of said suit in chancery, reference being had to said decree will more fully appear. And afterwards, to wit, at the December term of said circuit court, A. D. 1830, the said Walter Dun prayed, and was allowed, an appeal to the

Supreme Court of the United States, pursuant to the act of Congress in such case made and provided, as by reference to the proceedings of said circuit court will more fully and at large appear. Now, therefore, the condition of the above obligation is such, that, in case the aforesaid decree should be confirmed, in whole or in part, and the said Walter Dun, or the said Robert Dun, do and shall faithfully pay off and discharge all costs that now are, or may be hereafter, adjudged or decreed against said Walter Dun in the matter aforesaid, then the said obligation to be void, otherwise the same to be and remain in full force and virtue.

ROBERT DUN. [L. S.]

Witness: WM. KEY BOND.

THE UNITED STATES OF AMERICA—*District of Ohio, ss.*

I, William Miner, clerk of the 7th circuit court of the United States in and for the district of Ohio, aforesaid, do hereby certify the aforegoing to be an examined and true copy of the record and proceedings therein, in a suit determined in said court, in which Henry Clark and others were complainants, and Walter Dun and others were defendants, as the same remains among the records and files of said court.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and thirty-one, and of the American independence the fifty-fifth.

WILLIAM MINER, *Clk.* [L. S.]

Costs taxed at - - - -	$164 81
This transcript bond, &c. - - - -	52 50
	$217 31